No.

# IN THE SUPREME COURT OF THE UNITED STATES

JEREMIAH F. MANNING,

*Petitioner*,

v.

LUCY J. KIM,

*Respondent*.

**On Petition For A Writ of Certiorari To The Supreme Court of California**

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

JEREMIAH F. MANNING
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# APPENDIX A

Filed 4/10/19 Manning v. Kim CA1/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

| | |
|---|---|
| JEREMIAH F. MANNING,<br>Appellant,<br>v.<br>LUCY J. KIM,<br>Respondent. | A149875<br><br>(San Mateo County Super. Ct. No. FAM 0123613) |

Jeremiah F. Manning appeals from the trial court's final judgment in his dissolution action against Lucy J. Kim awarding Kim sole physical custody of their three minor children and awarding Manning spousal support. He raises several issues that were forfeited by failing to appeal from appealable orders or by failing to raise them below. Manning also

claims that the custody evaluator in the case was biased against him. We reject each of Manning's arguments and therefore affirm.

## I.
## FACTUAL AND PROCEDURAL BACKGROUND

Our ability to understand fully the factual and procedural history of this case is hampered because Manning failed to include several key documents— such as the petition for dissolution and some relevant trial court rulings— in his appellant's appendix, and Kim failed to submit either a respondent's appendix or a brief. We therefore summarize the factual and procedural history as best we can based on the record before us.

Manning is an attorney licensed to practice in New York, and Kim is a doctor. They were married for around 12 years and have three children. They separated on November 26, 2013.

These proceedings were initiated in December 2013, and soon thereafter

Manning requested Kim's financial support to help him pay his legal fees. A March 2014 trial court order memorializes an agreement that Kim would take out a personal loan of $50,000 guaranteed by a community asset (a retirement fund), that Manning would make monthly repayments to Kim for his half of the loan, and that $25,000 would be paid to an attorney on Manning's behalf as soon as the loan closed. Also in March, the court appointed a child-custody evaluator.

An attorney apparently briefly represented Manning but then filed a motion to withdraw in June 2014.[1] Manning complained about insufficient funds to pay for his legal fees as early as September 2014. At that time, he was proceeding without legal representation. He stated in a settlement conference

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[1] Kim represented at oral argument that Manning also was briefly represented by two other attorneys in the trial court; however, the sparse appellate record does not shed light on that assertion.

statement that he "desperately require[d] counsel" because of "the litigious behavior of [Kim] and her attorneys."

The child-custody evaluator submitted a confidential report dated September 16, 2014, recommending that the parents share legal custody of the children, that Kim have sole physical custody of the children, and that the then-current visitation plan for Manning to see the children continue.

Also in September 2014, the trial court ordered Kim to pay Manning $4,633 per month for spousal support and $634 per month for child support. Manning did not appeal from the order.

Manning repeatedly, and unsuccessfully, sought attorney fees. He requested $25,000 in attorney fees by motion filed in October 2014. Kim opposed the request, arguing that Manning had made an insufficient showing of need for the fees

under Family Code, section 2030.[2] The trial court denied the request by order filed in February 2015. Manning did not appeal from the order. He likewise did not appeal from an order in July 2015 that again denied his attorney fees. Manning filed another motion requesting attorney fees at the end of July. It is unclear from the record how the court ruled on the motion, but Manning did not retain counsel.

During this same time, Manning filed a request for an order to remove the custody evaluator and to exclude her report. The trial court denied the request.

Trial regarding custody issues began in September 2015. On the second day of trial, Manning again requested attorney fees. The trial court denied the request, stating, "So I will note for the record this is day two of trial that there has been no evidence or information presented to the Court by way of financial documents with

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[2] All statutory references are to the Family Code unless otherwise specified.

regard to this motion for attorney[] fees. There have been multiple motions made in the past. We are not going to continue the trial. I'm not going to allow [Manning's] motion, so the motion is denied." Manning did not appeal.

At the start of proceedings on October 28, 2015, the trial court (Judge Susan Greenberg) made a statement about an attorney who was apparently affiliated with a law firm representing Kim. Judge Greenberg stated: "Good morning. So through this trial [attorney] Mr. [Joseph] Crawford has not been present and it was— I didn't know and I didn't expect him to be here yesterday. So I need to state for the record although he didn't participate other than to provide a couple of documents, I need to state for the record that about 18 months ago during my campaign he made a thousand dollar donation to my campaign but he has not been participating and none of the other attorneys made donations so there was

nothing to disclose. I thought that I would just throw it out there because he's here again." Manning did not object, and Kim's counsel continued with her closing argument. The issue of child custody was submitted to the court in late October.

Around five months later, in March 2016, Manning discovered on the California Secretary of State's website that two of the law firms representing Kim had given Judge Greenberg campaign contributions in 2014. One contribution was in the amount of $2,000, and the other was in the amount of $500. Manning requested ex parte that Judge Greenberg recuse herself, but the motion was denied on March 18. Manning thereafter submitted a written request to disqualify Judge Greenberg under Code of Civil Procedure section 170.3, subdivision (c). He alleged that Judge Greenberg had failed to disclose campaign contributions as required under Code of Civil Procedure section 170.1. He asked the court to vacate

all of its orders since September 5, 2014, order a new trial on custody and support issues, and then recuse itself.

The trial court on April 5, 2016, struck Manning's statement of disqualification. The court concluded that (1) the statement was untimely, (2) disqualification was not mandatory because no individual lawyer (as opposed to law firm) in the proceeding contributed more than $1,500 (Code Civ. Proc., § 170.1, subd. (a)(9)(A)), and (3) Manning did not set forth further specific facts that would constitute a basis for disqualification under Code of Civil Procedure section 170.3, subdivision (c)(1). Manning did not challenge the order.

At the start of trial on financial issues, on April 6, 2016, Manning renewed a request for attorney fees. The trial court denied it. The court noted that Manning was still receiving around $5,200 a month in spousal and child support and that "[o]nce spousal support has been ordered and is being paid it equalizes the parties[']

incomes to enough of a degree that there is no need for attorney[] fees after that point." Trial proceeded and was submitted to the court on June 1 after six days of trial.

The trial court entered final judgment on September 16, 2016. In a detailed order spanning 23 pages, the court ordered that Manning and Kim share joint legal custody of their children and that Kim be awarded sole physical custody, with reasonable visitation to Manning. The court provided detailed guidance and procedures for visitation and communications between the parties. As for financial issues, the trial court modified child and spousal support to Manning, retroactive to temporary orders entered in May 2014. He was awarded monthly child and spousal support. The court made further orders and findings regarding property division.

Manning timely appealed. Kim filed a cross-appeal that was dismissed after she filed a request for dismissal. Manning at first proceeded without an attorney as he

had in the trial court, but he retained counsel after the trial court granted his motion for Kim to pay his appellate attorney fees.

## II.
## DISCUSSION

### A. *Manning Forfeited His Right to Challenge the Denial of Attorney Fees Under Section 2030.*

Manning argues at length that he was severely prejudiced by the trial court's denial of his request for attorney fees under section 2030. Section 2030 provides that to ensure that each party has access to legal representation, the court may order one party to a dissolution action to pay the attorney fees of the other party. (§ 2030, subd. (a).) At oral argument, Manning's counsel argued that the court awarded sole physical custody to Kim because of Manning's inability to pay for an attorney. To support the argument, he pointed to a statement in the court's judgment that Manning was "often acting as an advocate more than a father, and is over-zealous at

times. It is frustrating for [Kim] and her counsel as well as the Court at times." According to Manning's counsel, this statement proves that the court's custody rulings would have been more favorable to Manning if he had not been self-represented. We are not persuaded. The statement, read in context, simply describes Manning's overall behavior toward his children and the court. It falls far short of demonstrating an error in awarding physical custody in Kim, especially since the judgment elsewhere makes clear that Manning did not at the time have a permanent address in California.

In any event, we lack jurisdiction to review Manning's complaints about the denial of his requests for fees. "It is clear that the denial of a request for pendente lite attorney fees [in dissolution actions] is appealable." (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1311; see also *In re Marriage of Skelley* (1976) 18 Cal.3d

365, 368 [when a court renders interlocutory order collateral to main issue and dispositive of rights of parties, direct appeal may be taken].) "California follows a 'one shot' rule under which, if an order is appealable, appeal must be taken or the right to appellate review is forfeited." (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8; see also Code Civ. Proc., § 906 [court not authorized to review decision or order from which an appeal might have, but was not, taken].)

Manning requested attorney fees several times during the proceedings below, and the most recent denial came in April 2016, about five months before the entry of the order from which Manning did appeal. Those denials had long become final, and Manning forfeited his challenge to them by not timely appealing from them. (*In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119 [party forfeited challenge to order on pendente lite attorney fees by not timely appealing from it].)

*B. Manning Also Forfeited His Right to Challenge the Striking of His Statement of Disqualification.*

Manning next argues at length that Judge Greenberg erred in not timely disclosing contributions from a law firm representing Kim and in not recusing herself once Manning brought the disclosure issue to her attention. This issue was also not preserved for our review because Manning failed to follow the proper procedure to challenge the trial court's ruling. "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." (Code Civ. Proc., § 170.3, subd. (d).) Under this provision, Manning forfeited his right to review by this court by not challenging the striking of

his statement of disqualification by seeking writ review within 10 days of the judge's April 5, 2016 order.

C. *Manning Has Not Established that the Custody Evaluator Was Biased.*

Manning next contends that the trial court erred in relying on the custody evaluator's "incomplete" and "biased" report, but we disagree.

Evidence Code section 730 authorizes a court to appoint a disinterested custody evaluator to provide the court with an impartial custody report stating the evaluator's reasons after reviewing possible custody arrangements. (*In re Marriage of Adams & Jack A.* (2012) 209 Cal.App.4th 1543, 1562.) " 'The job of third parties such as . . . evaluators involves impartiality and neutrality, as does that of a judge, commissioner or referee.' " (*Ibid.*) California Rules of Court, rule 5.220, sets forth detailed procedures for the appointment of child-custody evaluators,

and rule 5.225 lists the requirements for evaluators.

The evaluator noted in her report the challenges she faced because Manning failed to follow the court's direction to cooperate with her, failed to timely complete required tasks, and "did not make scheduling appointments a priority." Her final evaluation was based on interviews with Kim spanning five hours and a single interview with Manning spanning two hours. In its order awarding the parties joint legal custody of their children, with sole physical custody to Kim and reasonable visitation to Manning, the court acknowledged its own difficulties working with Manning and noted that Manning's behavior could sometimes be frustrating. The court nonetheless found, based on the evidence presented, that Manning loves his children and his children love him, and it would not be in the children's best interest to significantly modify the children's visitation schedule with Manning.

Although the standard of review in assessing a trial court's denial of a motion to remove a child custody evaluator is unclear, we cannot conclude that the court erred in declining to strike the evaluator's report under any potentially applicable standard. In *In re Marriage of Adams & Jack A.*, *supra*, 209 Cal.App.4th 1543, the court considered whether the trial court properly denied a party's motion to remove a custody evaluator based on alleged bias. (*Id.* at p. 1563.) The court determined that the question of whether the evaluator was biased against a party was a question of law to be reviewed de novo because the facts were undisputed. (*Id.* at pp. 1563-1564.) Here, by contrast, the facts are not undisputed. On appeal, Manning focuses on various aspects of the custody report and takes issue with the way the evaluator characterized his participation (or lack thereof) in the evaluation process. But the trial court found that Manning was, in fact, difficult to deal with. Not only are the facts

here disputed, but Manning also fails to connect any alleged bias by the evaluator to any adverse ruling against him. He does not specify how the court should have ruled differently on custody issues, let alone how the evaluator's supposedly biased report led to an erroneous result. Nor does he specify any requirement in the California Rules of Court that the evaluator or the trial court violated.

The cases upon which Manning relies are distinguishable. Again, in *In re Marriage of Adams & Jack A.*, the facts underlying the motion to remove a custody evaluator were undisputed, and the trial court also made a finding that the evaluator had "lost his objectivity." (209 Cal.App.4th at pp. 1563-1564.) The court concluded that even under the most deferential standard of review, the trial court abused its discretion in denying the motion to remove the evaluator for bias given its factual finding of actual bias. (*Id.* at p. 1564.) By contrast, the trial court

here agreed with the evaluator's assessment of Manning's behavior. And in *Leslie O. v. Superior Court* (2014) 231 Cal.App.4th 1191, the evaluator showed several signs of actual bias and went so far as to "step[] outside her role as evaluator to advocate against [one parent] and to help [the other parent]." (*Id.* at p. 1205.) There is no such showing that any such advocacy occurred here. Under the totality of the circumstances, we cannot conclude that the court erred in declining to strike the evaluator's report.

*D. Manning's Arguments Related to Kim's Financial Condition Were Forfeited or Lack Merit.*

We next reject each of Manning's brief arguments about Kim's finances. Manning first notes that Kim's income and expense declaration filed on November 20, 2014, showed she had $93,642 in stocks, bonds, and other assets, and a declaration filed around a year later, on September 22, 2015, showed $104,618 in stocks and bonds. Then on March 15, 2016, Kim

reported $0 in stocks, bonds, and other assets. Manning contends that "[t]his dissipation of assets while a divorce was being litigated, without notice to Mr. Manning or court approval, appears to be highly inappropriate." As Manning himself acknowledges, however, the issue "was never even mentioned" below. He says the fact the issue was not raised below was another reason he would have benefited from having counsel, and he argues the money "should have been accounted for in the judgment." Having failed to raise the issue in the trial court, Manning forfeited the issue for appellate review.

Manning next challenges the temporary spousal order entered in July 2014. The temporary spousal support order was appealable, but Manning did not seek appellate review. (*In re Marriage of Skelley*, *supra*, 18 Cal.3d at pp. 369-370; *In re Marriage of Winter* (1992) 7 Cal.App.4th 1926, 1932.) He therefore forfeited his

right to challenge it. (*In re Marriage of Weiss*, *supra*, 42 Cal.App.4th at p. 119.)

Finally, Manning argues that the final judgment must be reversed because the support provisions "did not account for Dr. Kim's rental income." (Unnecessary capitalization and bold omitted.) This one-page argument fails to include factual detail. Kim testified that persons named Maria and Steven Kang own two properties, that Kim lived at one of those properties, and that she rented out a cottage on the property. She first rented it to a couple who paid $3,200 per month, and she later rented it to someone else for $3,300. In March 15, 2016, Kim listed $3,200 as an amount of expenses paid by others. The trial court concluded that Manning did not have an interest in any rents Kim received because they post-dated the couple's separation. Manning does not challenge that finding, but he argues that the court should have factored in the monthly rental income Kim received when

calculating support payments. He contends that Kim listed her rental income on her income and expense declaration as expenses paid by others, which was part of her and her attorneys' "consistent pattern of concealing wealth to avoid paying Mr. Manning a fair amount in spousal support."

The record and briefing are far too undeveloped for us to accept the contention. The record does not reveal the nature of the $3,200 Kim listed as an expense, much less that it was actually a reference to rental income. And Manning's briefing provided no analysis on how the amount affected the court's calculation or how a proper calculation would affect the amount of his support. At oral argument, Manning's counsel referenced the DissoMaster calculation attached to the judgment, but this reference fails to satisfy Manning's appellate burden. Without providing further context—such as explaining the nature of the expense with

citations to the record, describing whether the issue was litigated below, and analyzing how the inclusion of any income would alter support payments—Manning fails to demonstrate error. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16 [where issue not adequately supported by citations to record, court may decide appellant has waived issue rather than scour record unguided].)

## III.
## DISPOSITION

The judgment is affirmed. Kim shall recover her costs on appeal.

__s/P.J. Humes/_____

Humes, P.J.

WE CONCUR:

__s/Marguilies, J./_____

Margulies, J.

__s/Banke, J./_____

Banke, J.

# APPENDIX B

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

| | |
|---|---|
| JEREMIAH F. MANNING,<br>Appellant,<br>v.<br>LUCY J. KIM,<br>Respondent. | A149875<br><br>(San Mateo County Super. Ct. No. FAM 0123613) |

The petition for rehearing is denied.

Dated: April 30, 2019

__s/P.J. Humes/_____

Humes, P.J.

WE CONCUR:

__s/Marguilies, J./_____

Margulies, J.

__s/Banke, J./_____

Banke, J

*Manning v. Kim* A149875

# APPENDIX C

**Court of Appeal, First Appellate District, Division One – No. A149875**

**S255905**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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JEREMIAH F. MANNING,

*Appellant*,

v.

LUCY J. KIM,

*Respondent*.

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**The petition for review is denied.**

**Dated: June 26, 2019**

**s/Cantil-Sakauye**

**Chief Justice**

# APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

| | | |
|---|---|---|
| Jeremiah F. Manning, | ) | |
| | ) | |
| Petitioner, | )CaseNo. F0123613 | |
| | ) | |
| vs. | ) | |
| | ) | |
| Lucy J. Kim, | ) | Final Judgment |
| | ) | after Trial |
| | ) | |
| Respondent | ) | |
| | ) | |

The matter of child custody came on for trial in Dept. 3 before the Honorable Susan L. Greenberg, beginning September 28, 2015 and submitted to the Court for decision on October 28, 2015, after seven days of trial. Petitioner appeared in pro per. Respondent appeared with her counsel, Abby O'Flaherty

from the firm Hanson, Crawford and Crumm, and various other attorneys from that firm including Mr. Crawford. After review of the testimony and evidence presented at trial, the Court makes a permanent order regarding child custody and visitation. The Court understands it has the widest discretion in doing so, and that there is no presumption in favor of either joint or sole legal or physical custody. The Court understands that the applicable standard is the best interests of the children, and that it is the Court's duty to assure the children's health, safety, and welfare, and also to assure frequent and continuous contact with both parents.

The Court appreciated the Respondent's concerns about the difficulties she has experienced in working with the Petitioner, the inconsistencies, the lack of communication, and difficulties communicating. The Court has personally seen evidence of those difficulties during the time that it has presided over this case, and it has seen evidence of those difficulties while Judge Richard DuBois presided over this case. The Court feels that in some respects, Petitioner is often acting as an advocate more than a father, and is over-zealous at times. It is frustrating for the Respondent and her counsel as well as the Court at times. Based

on the evidence and testimony presented at trial, the Court makes the following findings: The Court fully believes that the Petitioner loves his children and his children love him. It is clear to the Court that the Respondent has been the primary caretaker of the children for many years and that she loves them and they love her.

There is evidence that Petitioner has not acted in the best interests of his children at times. There is also evidence that Respondent has not acted in the best interests of her children at times. The Court has yet to see a perfect parent who always acts in their children's best interests. The Court finds that Petitioner is not so distant - both

geographically as well as emotionally and physically - from this children as to be unknowledgeable about their health, education, safety and welfare needs.

The Court finds that it is not in the best interests of the children to deny them the input and wisdom of Petitioner as to their health, education, safety and welfare.

The Court finds that it is not in the best interest of the children to significantly modify the current visitation orders to such a degree as to cause trauma to the children, especially Paxton, the youngest, who is just about to turn seven years old. Consistency and routine are critical for these minor children to feel

secure in their lives and to prosper and grow into young adults.

The Court finds that a modification from the current actual visitation that Petitioner has with his children to ten days per month, all at once, is too drastic, and potentially traumatic for the minor children.

With regard to Dr. Press's testimony and recommendations, dated September 16, 2014, the Court makes the following findings: Dr. Press recommended the parties share joint legal custody of the minor children and that Respondent have sole physical custody of the minor children. She made this recommendation for joint legal custody after approximately five hours of interviews with

the Respondent and only two hours of interviews with Petitioner. The Court notes that despite hearing significantly more information from the Respondent than the Petitioner, Dr. Press still made a recommendation for joint legal custody. The Court finds that there is no present evidence that Respondent's father (Dr. Yeong Kim) is a current threat or has been a threat to the parties' minor children despite the evidence of his past abuse of Respondent. The past abuse is extremely remote in time and there has been no current evidence that would indicate to the Court that the minor children are at risk when in the presence of Respondent's father.

The Court makes the following Orders:

The parties shall share joint legal custody of the minor children. Respondent is awarded sole physical custody of the minor children, with reasonable visitation to Petitioner. Effective December 1, 2015, and subject to the one-time modification detailed herein, Petitioner's visitation shall be each month from the first Friday after school to the Monday following that first Friday, either at the end of school or 5 :00 pm if school is not in session, for approximately three consecutive days. Two days later, petitioner shall have a dinner visit with the children on Wednesday from 4:00 pm to8:00 pm. One day after the Wednesday dinner visit, Petitioner

shall have his second visitation beginning Thursday after school, or 5 :00 pm if school is not in session, through the following Sunday at 5:00 pm, or Monday at 5:00 pm if school is not in session on the Monday, for approximately 3 or 4 consecutive days.

The Court grants a one-time modification to Petitioner's visitation for the month of December 2015 only. This modification is to allow Respondent to attend her brother's wedding in Chicago with the children. Petitioner's December 2015 visitation shall be the second and third weekends, rather than the first and second weekends. Thus, for the

month of December of 2015 only, Petitioner shall have his visitation as follows:

Beginning Friday December 11, 2015, after school to Monday December 14, 2015, at the end of school, a dinner visit on Wednesday December 16, 2015 from 4:00 pm to 8:00 pm, and Thursday December 17, 2015, at the end of school through Sunday December 20, 2015 at 5:00 pm, at which time Respondent's Christmas vacation shall commence pursuant to the orders herein. Petitioner must give ten ( 10) days-notice to respondent if he is going to cancel a visit. This does not negate the other notice requirements as detailed herein. With regard to the first Friday of Petitioner's monthly visitation, if Petitioner does not pick

up the children by the next day, Saturday, at 8:00 pm the entire weekend is forfeited. This shall only be pennitted in an emergency and shall not happen more than two times per year. As to Petitioner's Wednesday visits, if he is more than one hour late, the visit is forfeited. As to Petitioner's second weekend, he may have a caregiver pick up the children after school on Thursday, but if he is not able to be with the children by 9:00 pm on that Thursday, the entire weekend visit is forfeited.

If Petitioner cancels a visit, there shall be no makeup time permitted, and Petitioner shall be solely responsible for both finding childcare and payment of all associated costs,

particularly if Respondent is on-call. If the parties agree to a modification of visitation, then there shall be makeup ti.me.

If the Petitioner misses more than two Wednesday dinner visits within six months, then his dinner visits shall immediately terminate.

If within a one-year period, the Petitioner misses, without ten days-notice, two of the first weekends or two of the second weekends, or both, then, without further order of the Court, Petitioner's visitation schedule shall immediately become one weekend per month from the first Wednesday after school through the following Monday return to school, and no additional dinner

visits shall be permitted. This order does not apply if the Petitioner misses the first and second weekend in the same month. Within a one-year period, there must be two misses of a first visit in two separate months, or two misses of a second weekend in two separate months, or one miss of a first weekend and one miss of a second weekend in two separate months.

After six consecutive months of consistent visits between Petitioner and his children in which there are no missed visits or forfeits, including any additional vacation or holiday time for Petitioner, then beginning with the first weekend of that seventh month, Petitioner's visitation shall modify to begin

the first Friday of the month beginning after school, or 5 :00 pm if school is not in session, for ten consecutive days to the following Monday return to school, or 5 :00 pm if school is not in session. The requirement for six months of consecutive and consistent visits includes the Wednesday dinner visits. Therefore, all visits outlined for Petitioner in this order must be fully completed six months in a row for the new visitation schedule to take effect.

Petitioner's summer vacation shall be as follows: Petitioner shall have one vacation of two weeks in length, and one vacation of one week in length. Each vacation shall be non-consecutive. There must be a minimum of

two weeks in between those two vacations. In even years, Petitioner will have first pick of dates for his two week and oneweek vacations. In odd years, Respondent will have first pick of dates for her vacation time. The choice of dates must be communicated to the other parent, in writing, via email no later than March 15th of that year. If that deadline is not met, the other parent gets first choice of vacation dates and must choose and communicate that choice to the other parent by April 1st of that same year.

For all exchanges other than at school, the receiving parent shall pick up from the other parent, so long as the. other parent is located within San Francisco, San Mateo County, or

Santa Clara County but not south of San Jose. The parties must text each other if they are going to be more than 10 minutes late for a pick up. The request for each parent to have their own set of sports equipment is denied. The parents shall transfer all necessary sports equipment for the children at the time of the custodial exchange.

If a child or the children are away from home for an overnight of 24 hours or more, other than for a sleep over with a friend, the parties shall exchange addresses and phone numbers of where the child(ren) will be.

In odd years, mother will have the children for their ski week break. She will also have the first half of Christmas break, which shall

include Christmas Eve and Christmas Day. The exchange shall be on a Saturday at 9:00 am unless that is Christmas Day, then it will be on Sunday at 9:00 am. This order is made with the understanding that Christmas break begins on a Friday after school before Christmas and resumes on a Monday morning after New Year's Eve, and is usually approximately 17 or 18 days in length. In odd years father will have the secm1d half of Christmas break, which will include both New Year's Eve and New Year's Day. In odd years Father will also have spring break and Thanksgiving break. In even years, this holiday schedule reverses.

All holidays, other than Christmas break which is spelled out more specifically herein above, shall begin at 9 :00 am the day after the last day of school and shall end at 5 pm on the Sunday before school resumes. This applies to spring break, ski week, and Thanksgiving break.

Mother shall be with the children on Mother's Day from the Saturday before Mother's Day at 8:00 pm through and including Sunday, the day of Mother's Day, at 8:00 pm. Father shall be with the children on Father's Day from the Saturday before Father's Day at 8:00 pm through and including Sunday, the day of Father's Day, at 8:00 pm.

Subject to exception for Paxton's birthday as detailed herein, for the children's birthdays, if Petitioner is present in the San Francisco Bay Area on the actual day of a minor's birthday, he may have the children for a four-hour block of time on that child's birthday. The time shall be from 4:00 pm to 8:00 pm if the child's birthday falls on a school day, or from 9:00 am to 1:00 pm if the child's birthday falls on a weekend.

When Paxton's birthday falls on a school day, the parties shall alternate timeshare with the children to allow each the opportunity to take Paxton trick or treating. In even years, beginning in 2016, Petitioner will have the option to spend Paxton's birthday with him

from 6: 15 pm to 9: 15 pm, and if Petitioner exercises this option, Respondent will have the children from 3: 15 pm to 6: 15 pm. In odd years, this will reverse and respondent will have the children from 6:15 pm to 9:15 pm and Petitioner has the option to visit from 3:15 pm to 6:15 pm. Petitioner will provide Respondent with at least seven (7) days-notice if he intends to be present on a child's actual birthday.

If Petitioner is not present in the San Francisco Bay Area on a child's actual birthday, the Petitioner will celebrate that child's birthday with all of the children during his weekend or other visit closest to the actual birthday of that child.

The request for additional holidays to Petitioner is denied. He will certainly always have the children on Labor Day, as well as other Monday holidays that fall within the first two weeks of any given month. In 2015, for example, that would include Columbus Day in October. He will often have the 4th of July. The Court will not add additional holidays such as Memorial Day.

Each parent shall take the children to their scheduled practices, games, and school events when the children are with that parent. If there is a request for a play date and/or birthday party during a parent's custodial weekend, each parent shall take each child to

a minimum of one play date and one birthday party per weekend. The custodial parent shall be responsible for purchasing and bringing a gift and card to birthday parties. This shall not preclude either parent from bringing the child(ren) to more than one play date or birthday party per weekend. The following extracurricular activities are approved by this Court for the minor children:

Quinn: Football, basketball, tennis, hip hop dance, piano, soccer, and Canada College math class.

Stella: Soccer (A Y or club), lacrosse, ballet, gymnastics, ice skating, horseback riding, piano and voice.

Paxton: Soccer, basketball, lacrosse, chess club, Kumon, and a musical instrument.

The Court also preapproves theater for any of the children.

Absent unusual circumstances, no more than three sports or major activities per child, per season, will be permitted. The Court distinguishes between sports or activities that require more than one participation per week, and those that can be added on over and above the three sports or major activities per season as follows:

Each child shall not participate in more than three activities in which there are multiple practices and/or games per week at any given time ("sports or major activities"). This would

include activities such as football, basketball, lacrosse, or soccer. In addition to each of those three sports or major activities that take significant time per week, each child may take as many other additional activities as the child desires that will only involve a once-a-week participation of one hour or less per week. This presumably would include voice, piano, playing a musical instrument, and chess-club.

Horseback riding, if not on a consistent basis, is not included in the maximum of three sports or major activities if it is a few times during the season and will not be precluded by the three sports or major activities rule. Theater, if only a once per week rehearsal, is

also not included in the maximum of three sports or major activities. If theater is more than once per week it will count toward the three sports or major activities rule.

Educational activities that are part of or tangential to school curricular shall not be prevented by this order. Thus, for example, the children are not precluded from additional science fair projects, Kumon, or Canada math classes.

With respect to extracurricular activities for the children, other than Canada math class and Kuman, the following applies: Mother shall give father 48 hours' notice if a child wants to participate in an activity other than those pre-approved by the Court, or if a child

wishes to delete one or more of said activities. This notice is informational only. And unless a child is engaged in more than three sports or major activities, as previously defined, this change in extracurricular activities for that child shall become the approved extracurricular activity without further order of the Court.

All communications between the parties shall be by e-mail or text message, absent an emergency. Communications for an emergency shall be by phone call as soon as possible. Urgent communications shall be by text and shall require a response within one hour. If there is no response within one hour, the parent shall take whatever action is

necessary to protect the child(ren) with the urgent situation. Non-urgent and non-emergency communications shall be by e-mail and shall require a response within 48 hours. Because mother has sole physical custody of the children, if she does not receive a response within 48 hours then consent shall be deemed given to what was requested in her e-mail. This provision may not be used for major decisions, for example, choice of school, removing the children from the state, removing the children from the country, or a move away. This provision may be used for minor decision making purposes, for example, vaccinations additional to those ordered herein, or a child obtaining a driver's license.

Neither parent may remove the children from the State of California without Court order or written permission of the other parent.

Permission is preapproved and granted by this Court for either party to travel within the 50 United States for any visits seven days or more in length when all three children are not in school. "In school" refers to actual school days and does not include scheduled extracurricular activities.

Neither parent may remove the children from the United States without Court order or written permission of the other parent.

Each parent shall be permitted to take the children out of school for one day per academic year. This only applies once for

each parent per academic year, thus, if a parent chooses to exercise this provision and takes tine children out of town at a time when only one child is in school, that shall constitute that parent's one day, and that parent will not be permitted to do so again until the next school year.

Respondent shall obtain all school and state required vaccinations for the children without further permission, agreement, or participation of the Petitioner. The timing shall be at the mother's sole discretion and within the guidelines of the school and state requirements.

Neither parent shall disparage the other in front of the children, and each shall make

good faith efforts to ensure that others, including friends and family, do not do so. Neither parent shall discuss this litigation with any of the minor children.

To maintain the status quo, and as the parent with sole physical custody, mother shall keep the children registered annually in their present school district, and keep them with the same doctors, dentists, and other medical providers that are presently treating them, unless a treating professional retires. This order is without prejudice to Petitioner's motion scheduled for December 1, 2015, regarding high school choice.

The request for a protective order against the Respondent's father (Dr. Young Kim) is denied.

The matter of financial issues came on for trial in Dept. 3 before the Honorable Susan L. Greenberg, beginning April 6, 2016 and submitted to the Court for decision on June 1, 2016, after six days of trial. Petitioner appeared in pro per. Respondent appeared with her counsel, Abby O'Flaherty of Hanson Crawford Crumm and various other attorneys from that firm including Mr. Crawford. After review of the testimony and evidence presented at trial, the Court makes the following orders:

The Court finds that the parties' date of separation is November 26, 2013. The Petitioner initially pled November 26, 2013 as the date of separation and did not file an amended Petition alleging a different date; therefore the Court finds this case is factually different from the In Re Marriage of Davis case.

Petitioner's request to retroactively modify the temporary child and spousal support orders is granted. The Court finds that the jurisdictional issue raised by the Respondent does not prevent the Court from having jurisdiction to retroactively modify the temporary support orders. Specifically, Petitioner's unsuccessful request to modify

between the initial support orders and the current order does not equate to the Court's loss of jurisdiction, even though the orders denying modification did not contain language continuing to reserve jurisdiction over temporary support. Jurisdiction to modify the temporary orders was reserved retroactive to May 1, 2014. This is contained in the Stipulation and Order filed May 22, 2014. The Court also finds that there is substantial evidence to support a retroactive modification of both child and spousal support. This evidence includes, but is not limited to, evidence that the income inputs used for each party were incorrect in said

Stipulation and Order by several thousand dollars.

Effective May 1, 2014, the Court modifies temporary child and spousal support as follows:

Starting with the DissoMaster attached to the Stipulation and Order filed May 22, 2014, the Court modifies Respondent's income to $35,451 per month, and makes a further modification to also include dividend and interest income in the amount of $800 as reported for 2014 on Respondent's Income and Expense Declaration. Effective May 1, 2014, the correct child support amount for the three minor children is $2,201 and the correct spousal support amount is $7,411 per

month, for a total of $9,613 per month, pursuant to the DissoMaster attached hereto as Exhibit A and incorporated herein by this reference.

Pursuant to the Stipulation and Order filed May 22, 2014, Respondent paid Petitioner spousal support of $4,739 and child support of $3,942 (total $8,681) for the month of May 2014. Pursuant to said Stipulation and Order Respondent paid Petitioner spousal support of$5,731 and child support of$1,785 (total $7,516) for the month of June 2014.

Therefore Respondent has underpaid Petitioner $932 for May 2014 and $2,097 for June 2014.

Pursuant to the Findings and Order after Hearing filed September 24, 2014, Respondent paid Petitioner spousal support of $4,633 and child support of $634, for a total of $5,267 per month, beginning July 1, 2014. The Court finds that Respondent's income for the 2015 calendar year was in fact slightly greater than the amount used in the 2014 calculation, but not enough to make as substantial difference in the support calculations. Therefore Respondent has underpaid Petitioner $2,778 per month for spousal support and $1,567 per month for child support (total $4,345) for 16 months through October 31, 2015, for a total underpayment of $25,072 for child support

and $44,448 for spousal support for the 16 month period from July 1, 2014 through October 31,2015.

Effective November 1, 2015, the Court increases Petitioner's self-employment income to $50,000 per year. Respondent's information for the calculation remains the same. Effective November 1, 2015, child support for the three minor children is $1,631 per month, and spousal support is $6,961 per month, for a total of $8,592 per month, pursuant to the OissoMaster attached hereto as Exhibit B, and incorporated herein by this reference. The Court implements a Bonus Table, attached hereto as Exhibit C and incorporated herein by this reference, for the

first six months of the calendar year 2016 as it applies to both child and spousal support. Therefore Respondent has underpaid Petitioner $2,222 per month for spousal support and overpaid Petitioner $2,311 per month for child support for 8 months through June 30, 2016, for a total overpayment of $18,488 for child support and underpayment of $17776 for spousal support for the 8 month period from November 1, 2015 through June 30, 2016. Effective July 1, 2016, the first day of the calendar month after Petitioner completed six months of visitation pursuant to this Court's orders herein, the Court modifies Petitioner's timeshare to 40%. Effective July 1, 2016 child support for the

three minor children shall be payable by Respondent to Petitioner in the amount of $2,466 per month, pursuant to the DissoMaster attached hereto as Exhibit D and incorporated herein by this reference. Said child support shall be payable by Respondent to the Petitioner on the 1st of each month.

The Court implements the Bonus Table previously identified as Exhibit B for the second half of the calendar year 2016, and forward, as it applies to child support. In making this order, the Court modifies Petitioner's income to $90,000 per year, the amount to which Petitioner stipulated. Respondent's information in the calculation

remains the same. The Court notes that according to Respondent's declaration filed April 28, 2016, paragraph 39, her income for the first 3.5 months of 2016 is substantially greater than that of 2015. The Court finds that although there was a vocational evaluation that held some weight, Petitioner's testimony was credible as to his ability to earn from the date of separation until now, given a number of factors besides his past history as detailed in the Court's permanent support analysis below, but also given his self-representation for a large period of time in this case.

The Bonus Table true-up shall occur on February 15th of each year, on which date

Respondent shall mail a copy of her W-2 for the preceding calendar year to Petitioner along with her check payable to Petitioner for the correct percentage amount, pursuant to the Bonus Table herein, of any income over and above that used for Petitioner in the Wages and Salary Column of Exhibits B and C herein, as applicable. The child support add-on order made December 9, 2014, remains in full force and effect.

Each party shall keep all personal property in his or her possession, except that Petitioner shall provide to Respondent and use his best efforts to locate and copy the following items: family photos and videos on the laptop in Petitioner's possession; photo

albums of Quinn. Petitioner shall also provide to Respondent the children's Christmas stockings and ornaments that were specifically for the children. There shall be no equalizing payment as to this property division.

The 2008 Acura MDX presently in Petitioner's possession is awarded to him as his sole and separate property. Effective upon expiration of the current auto insurance policy in November 2016. Petitioner must obtain his own car insurance for this vehicle. He must also transfer title of this vehicle into his own name forthwith.

The 2004 Honda Pilot and 2012 Acura NIDX in Respondent's possession are awarded to

her as her sole and separate property. There will be no equalizing payments owed for the foregoing vehicles. The Court finds that the 2002 Subaru Outback had zero value and was disposed of properly by the Respondent. The community interest in Respondent's retirement accounts, specifically the 40 l (k), the deferred compensation account, and pension, shall be divided equally by Qualified Domestic Relations Order, to be prepared by Moon, Schwartz & Madden. All associated costs shall be shared equally by the parties. Respondent's life insurance policy provided through her employment is confirmed to Respondent as her sole and separate

property, without offset or reimbursement to Petitioner.

The Court finds that the community does not have any interest in the Fidelity Investment account and Fidelity IRA in Respondent's name, and both are confirmed to Respondent as her sole and separate property.

All bank and checking accounts, and the like, not specifically detailed herein, in the sole name of a party, is confirmed to that party as his or her sole and separate property, without offset or reimbursement. All debt, not specifically detailed herein, in the sole name of a party, is confirmed to that party as his or her sole and separate debt, without offset or reimbursement.

The Court finds that there is not community interest in the Kim Family Limited Partnership ("KFLP"), or in Respondent's father's (Dr. Young Kim) estate. The Court specifically finds that the tax return filings with regard to the KFLP were not dispositive and not persuasive to transmute the KFLP to something in which the community would have an interest.

Respondent shall amend her 2011, 2012 and 2013 tax returns as necessary to accurately reflect the allocation of the distributions from the Kim Family Limited Partnership. The Court retains jurisdiction to make the Petitioner whole should he incur any tax

liability as a result of Respondent's tax filings in said years.

The Court finds that Respondent's shares in Kaiser Permanente are community property, which shall be divided equally between the parties. The parties shall cooperate to take any action or prepare any order necessary to effectuate the division of these shares. In the event the shares cannot be divided, or cannot be divided until Respondent's retirement, the Court retains jurisdiction over this asset.

The Court finds that Respondent's home purchase benefit through her employer is not divisible and presently has no value, but the Court retains jurisdiction over this asset in

the event that it attains a value and does become divisible.

The Court finds that Petitioner does not have an interest in any rents received by the Respondent, as they are post-date of separation, and therefore not divisible by the parties.

With regard to the security deposit on the family residence, the costs to restore the lawn and the entire security deposit refunded are both awarded to Respondent, with no equalizing payment due.

The two sanctions awards imposed against Petitioner in the amounts of $3,000, plus interest of S 94 .25 through June 30, 2016, and $5,000, plus interest of $569 .86 through

June 30, 2016, shall be awarded on Respondent's side when computing the equalizing payment. With regard to the 401(k) loan, all monthly repayments owed since September 1, 2014 through June 30, 2016, plus interest of $973.32 as set forth in Exhibit G attached hereto and incorporated herein by this reference, is awarded on respondent's side when computing the equalizing payment. Petitioner's one-half of the remaining balance of the 401(k) loan, or $17,589.44 as of July 1, 2016, shall also be awarded on Respondent's side when calculating the equalizing payment, which shall fulfill Petitioner's remaining obligation on this debt.

Petitioner shall pay Respondent for the costs of his car insurance that Respondent paid through November 2016, in the amounts of $1,062.75 and $1,975, for a total of $3,037.75. Petitioner shall pay respondent $17,754.37 for his one-half share of child support add-ons incurred and owed as of April 3 0, 2016. Pursuant to the foregoing orders, including the Court's orders on retroactive temporary child and spousal support and property division, the equalizing payment owed by Respondent to Petitioner is $12,865, as set forth on the Propertizer worksheet attached hereto as Exhibit E and incorporated herein by this reference.

None of the foregoing equalizing payments, QDROs, or orders to divide Kaiser shares shall be prepared or ordered forthwith. Said orders are stayed pending the briefing on attorney fees and costs and sanctions, and orders thereon.

As to permanent spousal support, the Court makes the following findings:

As to the marital standard of living, the parties had an upper-middle class standard of living. The argument that it was only middle-class is not accurate. Although there was only one income for the household, it was larger than the two incomes of middle-class families put together. The parties lived in a very affluent area, paying high rent; the

children participated in many activities that were not inexpensive; the parties took vacations; and the vast majority of time there was a full-time au pair for the children.

As to the parties earning capacity, the Respondent has at least three to four times the earning capacity of the Petitioner. The Court finds that the Petitioner can now become more fully employed to reduce the deficit between the parties, but his present earning capacity has clearly been impaired by periods of unemployment, to some degree for domestic duties, to some degree not, and to some degree for the move from New York to California having only a New York bar license.

The Court finds Petitioner clearly helped support Respondent to obtain her M.D. and obtain her position here in California as a surgeon, knowing his New York Bar admission would be an issue once he got here and he would not be, able to practice immediately as an attorney.

The Court finds the Respondent has the ability to pay spousal support and Petitioner has a present need for spousal support. The obligations and assets of the community have been appropriately divided by this order.

The marriage is one of long duration, approximately 11 years and nine months.

The Petitioner does have the ability to work and care for the children at the same time

during his custodial time to some degree. As the children get older, it will become easier for Petitioner to both work and care for the children; but for now, the Court finds that Petitioner can only work part-time, not full-time, during his custodial time.

Presently, both Petitioner and Respondent are young and healthy. Although there is a possibility that Petitioner's health may deteriorate due to Lyme disease, at this point it is speculative and the Court is not making orders that deal with that speculation.

There was no evidence presented as to domestic violence.

Spousal support shall be deductible by Respondent and taxable to Petitioner. In

balancing the hardships between the parties, the Petitioner does need spousal support at this time. The Court finds that Petitioner will be able to become self-supporting over time. Now that these very long, intense trials have concluded, based on Petitioner's own testimony, he will be able to focus more on his law practice, networking, and be able to increase his earnings and income over time. There was no evidence presented as to criminal convictions.

There were no other factors considered by the Court.

Permanent spousal support shall be effective July 1, 2016, and will be payable by Respondent to Petitioner in the amount of

$5,000 per month payable on the 1st of each month. No termination date shall be set, and spousal support shall continue until either party's death, Petitioner's remarriage, or further order of the Court.

Effective January 1, 2017, monthly support shall automatically step down from $5,000 per month to $4,000 per month, based upon the Court's finding that said step down is appropriate based on Petitioner's testimony that he will be able to increase the revenue from his law practice. The Court will hold a review hearing on January 17, 2017 at 9 :00 am, at which time either party may argue that the step down is not the correct amount or there should be no step down. If the

parties are satisfied with the step down, the review may be cancelled.

IT IS SO ORDERED.

Dated: September 14, 2016

__s/SLG/_____
Susan L. Greenberg,
Superior Court Judge

# APPENDIX E

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN MATEO**

| | |
|---|---|
| IN RE THE MARRIAGE OF | Case No. FAM0123613 |
| JEREMIAH F. MANNING, | |
| Petitioner, | **PETITIONER'S REQUEST FOR JUDICIAL DQ/RECUSAL AND NEW TRIAL** |
| LUCY KIM | |
| Respondent. | |

TO THE ABOVE ENTITLED COURT AND RESPONDENT/RESPONDENT'S COUNSEL PLEASE TAKE NOTICE that on April __, 2016 at ___ a.m./p.m. or as soon thereafter as the matter may be heard in Courtroom 6A of Department 3 of the above-entitled court, the Petitioner will move this Court first to vacate all of its orders in this case since September 5, 2014, then to order a new trial with regard to custody and support and related issues, and then to recuse itself for appearance of

impropriety, mandatory disqualifying cause and/or disqualify itself as a timely peremptory challenge by Petitioner, because of the Court's failure to disclose its receipt of campaign contributions from the Respondent's counsel for over 18 months after the donation, and surprisingly, until approximately halfway through the initial period of trial of this matter in September/October 2015, but before the trial days conclude in April/May 2016, after having served on the case since at least as early as **September 5, 2014**, where said contributions in the amount of at least $2000 were made by counsel of record in the case -- Hanson, Crawford and Crum Family Law Group -- (hereinafter "Crawford Firm") on **April 11, 2014** (see Exhibits A and B) and where the Crawford firm had been counsel of record in the case since at least as early as **February 1, 2014**, and where the Court, Judge Susan Greenberg presiding, should have disclosed pursuant to California Judicial Canon 3, that the Crawford Firm made contributions to her election campaign, at the first Mandatory Settlement Conference held before the Court in the Court's chambers on September 5, 2014, *over twelve (12) months before the Court's actual disclosure by*

*the Court itself, of said campaign contributions made by the Crawford Firm totalling $500 more than the amount requiring mandatory disqualification by the Court.* It also turns out that one of Respondent's other firms (she has 3 total) also contributed $500 to the Court such that Respondent's counsel reaches the statutorily-defined mandatory disqualification threshold in this manner as well. The Court thus acted contrary to California law in (1) failing to timely disclose the contributions in accord with Judicial Canon 3, (2) failing to disqualify, in accord with California CCP Section 170, herself given that the amount of the Crawford contributions exceed the $1500 statutory threshold for mandatory disqualification, and (3) failing to disqualify itself because co-counsel Phil Silvestri, a member of a different firm, not a member of the Crawford, but similarly retained earlier in this case by Respondent, also contributed $500 to Judge Greenberg's campaign thereby exceeding the $1500 statutory threshold for mandatory disqualification. As set forth in part below, this situation severely prejudiced the Petitioner and Quinn, Stella and Paxton, the three children of his marriage to the Respondent,

throughout the course of the Court's long period of failure to comply with California law, and continues to harm and prejudice them to this day. Since the first half of trial of this matter has only been had with respect to custody matters and proceedings are currently set for April and May 2016 for continuation of the trial with regard to other matters, including financial issues, this motion is brought timely at the earliest practicable opportunity during trial and the Petitioner therefore moves the Court to disqualify itself at this time pursuant to California Code of Civil Procedure Sections 170.1 and 170.6 and asks for the restoration of his due process right to peremptory challenge going forward.

## I. The Court's Duty to Disclose Campaign Contributions is Clear and Statutory

Petitioner does not bring this motion lightly. As the Court knows, Petitioner is proceeding *pro per* and has a very limited understanding of California law in general or California family law in particular. Nonetheless, Petitioner has worked for a good portion of his life on issues relating to just and fair due process for people all over the United States and

believes the issue he now raises before the Court is critical to the fair administration of justice in his case and for the future cases of families who come before the San Mateo Superior Court seeking a fair and impartial hearing.

Petitioner wondered for many months why his reasonable pleas for relief on seminal issues in this case that were having detrimental impact on he and his children were repeatedly rejected by the Court. These included Petitioner's repeated requests for (1) a complete, and medically-appropriate psychological and medical evaluation of the eldest son of the marriage, (2) an adequately-financed opportunity to create a home for the children of the marriage that was commensurate with the lifestyle during the marriage and in keeping with the realities of the cost of living in Silicon Valley, (3) attorneys' fees where the Court was fully aware that Respondent had full access to community property and as such was able to pay up to at least seven (7) attorneys and support staff at 3 separate firms while Petitioner was deprived of access to community property and forced to proceed *pro per* without counsel, (4) a fair custody evaluation process that respected well-accepted

principles of ethics and informed consent, and (5) fair adjudication of many other critical issues in this matter, including the rejection of Petitioner's subpoena for the custody evaluator's notes and underlying documents. Then, after overwhelmingly adverse evidentiary rulings just prior to the September/October 2015 custody trial where over 20 witnesses, including those relating to the issue of recidivist abuse of his children by the Respondent's father, were excluded by the Court, and a lengthy seven (7) days of trial where Respondent had at least 2 or more attorneys representing her every single day and Petitioner proceeded *pro per*, Petitioner learned from the Court itself that the Court had both received campaign contributions from the Respondent's counsel and had failed to disclose them in a timely manner as directed by Judicial Canon 3 and other relevant California laws.

Petitioner was surprised the Court did not disclose these contributions upon the occasion of the first Mandatory Settlement Conference in early September 2014 when the Court directed Petitioner to decide immediately whether he would exercise his right to have another judge manage the pre-trial

discovery and other matters in this case. Surely this information would have been relevant at that time, and the failure to disclose the contributions by opposing counsel creates, at minimum, an appearance of impropriety, where disclosure was not made upon the Court's entrance into this case and the Crawford Firm contributions of $2000.00 were made on April 11, 2014, nearly 5 months before. This deprived Petitioner of his peremptory challenge.

This information would also have been relevant and should have been disclosed by the Court at several other key inflection points in the case, including by way of example, when the Court (Judge Susan Greenberg presiding) announced in May and June 2015 that, in a departure from established procedure in the San Mateo courts, she herself would preside over trial of the matter. To not disclose the contributions by the Crawford Firm at that point, at minimum, further added to the appearance of impropriety. Among other inflection points, the Court also had the opportunity to disclose the contributions before the custody trial commenced on September 28, 2015.

As made evident in Petitioner's Declaration, disclosure of these contributions would surely have triggered Petitioner's exercise of his rights under California law to have a different judge hear the case. Petitioner and his children furthermore suffered severe prejudice while the Court withheld this information. For the reasons that follow, Petitioner now respectfully requests the Court attempt to correct this miscarriage of justice by recusing itself from this case. In addition, before the Court recuses itself, Petitioner also requests that the Court order a new custody trial, vacate all of its prior rulings and findings, and reset the various statutory time limits and related directives relevant to providing a clean slate for the new trial so that each party has opportunity to have appropriate expert witnesses, percipient witnesses and fact witnesses testify at the new trial.

Under California Code of Civil Procedure Section 170.1 (a)(6)(A), a judge shall be disqualified if any one or more of the following are true: for any reason (i) the judge believes his or her recusal would further the interests of justice, (ii) the judge believes there is a substantial doubt as to his or her capacity

to be impartial, (iii) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

## II. The Court, Judge Greenberg presiding, Should DQ/Recuse Itself Under 170.1(a)

In this case, the Court, Judge Susan Greenberg presiding, failed to disclose campaign contributions by opposing counsel for over a year and did not do so until trial in this matter was well underway. This is contrary to California law, Judicial Canon 3(E)(2)(b)(iii) which states that campaign contributions to trial judges shall be disclosed "at the earliest reasonable opportunity after receiving each contribution or loan. *The duty commences no later than one week after receipt of the first contribution or loan and cotninues for a period of two years after the candidate takes the oath of office, or two years from the date of the contribution or loan, which ever event is later."* [emphasis added]. Exhibits A, B and C hereto demonstrate that the Crawford Firm and the Silvestri Firm, both counsel to the Respondent, apparently made contributions to Judge Greenberg totalling $2500.00 within the last

two years.[1] For over a year, the Court failed to disclose these campaign contributions in violation of California law. Judicial Canon 3(E)(2)(b)(iii).

This violation creates, at minimum, an appearance of impropriety that satisfies California CCP Section 170.1 (a)(6)(A), in that it creates substantial doubt that Judge Greenberg can be impartial and a reasonable person would entertain a doubt that Judge Greenberg would be able to be impartial. Judge Greenberg's recusal at this time would truly further the interests of justice. The Petitioner therefore respectfully requests the Court, Judge Greenberg presiding, disqualify and/or recuse itself.

## III. The Court, Judge Greenberg presiding, Should DQ/Recuse Itself Mandatorily

According to records compiled by California Secretary of State and attached hereto as Exhibits A and B, Judge Greenberg received two separate contributions in the amount of $1000.00 to her re-election campaign and both were dated April 11, 2014. Exhibit A reflects the first contribution with transaction number 1852762-INC129 in the amount of $1000.00. Exhibit B reflects the second

contribution with transaction number 1838228-INC129 in the amount of $1000.00. In addition, the Silvestri Firm also made a contribution in the amount of $500.00 and this is reflected in Exhibit C as transaction 1852762-INC60. These amounts when combined, exceed the statutory limit for mandatory disqualification. The Court, Judge Greenberg presiding should also DQ/recuse herself on this basis as well under the Judicial Canon, and the California Code of Civil Procedure Sections 170.1 (a)(9)(A).

## IV. The Court Should Restore Peremptory Challenge Rights

The Court failed to disclose the campaign contributions of opposing counsel as required by California law. Petitioner was therefore deprived of his rights to due process and the exercise of his peremptory challenge under California Code of Civil Procedure Section 170.6. The Petitioner also respectfully requests that right be restored at this time.

**Declaration in Support of Motion**

I, Jeremiah "Jeremy" Manning, hereby declare:

1. I am over 18 years of age, and the Petitioner in these actions. The matters stated herein are known to me of my own personal knowledge, or if so stated I am informed and believe them to be true, and I am competent to offer this testimony.

2. On February 28, 2016, I saved a true and correct copy of Exhibit A and B reflecting the campaign contributions to Judge Susan Greenberg for her 2014 election by the Crawford Firm. On March 14, 2016, I printed the same, and also saved and printed a true and correct copy of Exhibit C reflecting the campaign contribution to Judge Susan Greenberg for her 2014 election by the firm of Silvestri, Silvestri & Milocq. Both firms have represented the Respondent in this action and Crawford Firm has represented the Respondent from April 11, 2014 (the date of its contributions) through the hearings and current continuing trial in this matter to the present.

3. I, as Petitioner in this matter, and the children of the marriage, have suffered substantial and continuing harm and prejudice by the rulings in

this case. Most recently, my eldest son suffered a broken leg while skiing because the Respondent did not supervise him and his grades have plummeted in an number of subjects. For instance, his grades in Science have gone from A+ to D+. My youngest son is extremely angry and lashes out physically against his brother and sister, and my daughter is beside herself and is having difficulty with a number of issues that result from the Court's decisions.

4. I, the Petitioner in this matter, wondered for many months why my reasonable pleas for relief on seminal issues in this case that were having detrimental impact on he and his children were repeatedly rejected by the Court. I have lost every motion in this case, but one, and that motion was only granted because of fraud by opposing counsel (the one firm that did not make a contribution in this case). These included my repeated requests for (1) a complete, and medically-appropriate psychological and medical evaluation of the eldest son of the marriage, (2) an adequately-financed opportunity to create a home for the children of the marriage that was commensurate with the lifestyle during the marriage and in keeping

with the realities of the cost of living in Silicon Valley, (3) attorneys' fees where the Court was fully aware that Respondent had full access to community property and as such was able to pay up to at least seven (7) attorneys and support staff at 3 separate firms while Petitioner was deprived of access to community property and forced to proceed *pro per* without counsel, (4) a fair custody evaluation process that respected well-accepted principles of ethics and informed consent, and (5) fair adjudication of many other critical issues in this matter such as this Court's denial of my request to enforce a subpoena for the custody evaluator's underlying notes and materials so that I could fairly exercise my right to cross-examination at trial.

5. After overwhelmingly adverse evidentiary rulings just prior to the commencement of trial in this matter on September/October 2015, where over 20 witnesses, including those relating to the issue of recidivist abuse of his children by the Respondent's father, were excluded by the Court, and a lengthy seven (7) days of trial where Respondent had at least 2 or more attorneys representing her every single day and Petitioner proceeded *pro per*, I

learned from the Court itself that the Court had both received campaign contributions from the Respondent's counsel and had failed to disclose them in a timely manner as directed by Judicial Canon 3 and other relevant California laws.

6. In May 2015, the Court, Judge Greenberg presiding, announced that she would try the case in this matter. I understand that it is unusual to have the same Judge that presided over Mandatory Settlement Conferences and pre-trial proceedings also try the case. Just as in September 2014 and continuing to the present, Judge Greenberg did not disclose at that time that she had received campaign contributions from my wife's attorneys in this case. Had I known this, I would surely have exercised my peremptory challenge and requested a new judge. I understand that the Court should have disclosed the campaign contributions of my wife's attorneys well-before this point in keeping with the Judicial Canons of Ethics in California.

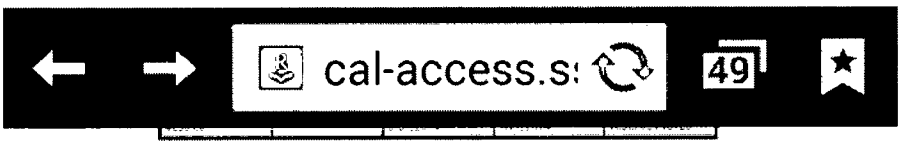
7. For these reasons, I respectfully request this Court first to vacate all of its orders in this case since September 5, 2014 in the interests of justice, and order a new trial with regard to custody and

support and related issues, and then recuse itself for appearance of impropriety, mandatory disqualifying cause and/or disqualify itself as a timely peremptory challenge by Petitioner, because of the Court's failure to disclose its receipt of campaign contributions from the Respondent's counsel for over 18 months after the donation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of March, at Palo Alto, CA.

s/JFM/
Jeremiah Manning

# EXHIBIT A




| | | | | |
|---|---|---|---|---|
| STUBBS & STUBBS ATTORNEYS AT LAW | | MONETARY | SAN MATEO | CA/94402 |
| | | | | |
| | | | | |
| $100.00 | | 3/31/2014 | 7/27/2014 | 1852762.INC121 |

| | | | | |
|---|---|---|---|---|
| LAUREN ZORFAS | | MONETARY | SAN CARLOS | CA/94070 |
| | LAW OFFICES OF LAUREN ZORFAS | | ATTORNEY | |
| | | | | |
| $200.00 | | 4/9/2014 | 7/27/2014 | 1852762.INC126 |

| | | | | |
|---|---|---|---|---|
| TIMOTHY WRIGHT | | MONETARY | MENLO PARK | CA/94025 |
| | SELF EMPLOYED (SAME NAME) | | ATTORNEY | |
| | | | | |
| $100.00 | | 4/8/2014 | 7/27/2014 | 1852762.INC127 |

| | | | | |
|---|---|---|---|---|
| HANSON, CRAWFORD, CRUM FAMILY LAW GROUP | | MONETARY | SAN MATEO | CA/94402 |
| | | | | |
| | | | | |
| $1,000.00 | | 4/11/2014 | 7/27/2014 | 1852762.INC128 |

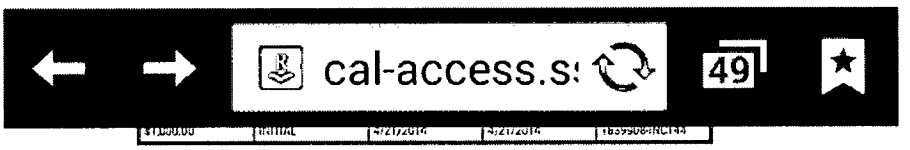
| | | | | |
|---|---|---|---|---|
| LAW OFFICE OF JOSEPH ZOUCHA | | MONETARY | REDWOOD CITY | CA/94063 |
| | | | | |
| | | | | |
| $1,000.00 | | 4/11/2014 | 7/27/2014 | 1852762.INC130 |

| | | | | |
|---|---|---|---|---|
| CHARLES RIFFLE | | MONETARY | REDWOOD CITY | CA/94062 |
| | AARON, RIECHART, CARROL & RIFFLE | | ATTORNEY | |
| | | | | |
| $1,000.00 | | 4/11/2014 | 7/27/2014 | 1852762.INC131 |

| | | | | |
|---|---|---|---|---|
| OWEN YOCH | | MONETARY | REDWOOD CITY | CA/94063 |
| | SAN MATEO COUNTY SHERIFF'S OFFICE | | SHERIFF'S SERGEANT | |
| | | | | |
| $100.00 | | 4/18/2014 | 7/27/2014 | 1852762.INC133 |

| | | | | |
|---|---|---|---|---|
| IAN YOURTZ | | MONETARY | MENLO PARK | CA/94025 |
| | SELF EMPLOYED (SAME NAME) | | ATTORNEY | |
| | | | | |
| $250.00 | | 4/11/2014 | 7/27/2014 | 1852762.INC135 |

# EXHIBIT B




| | | | | |
|---|---|---|---|---|
| $1,000.00 | INITIAL | 4/21/2014 | 4/21/2014 | 1839508-INC144 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| CHARLES RIFFLE | | | REDWOOD CITY | CA / 94062 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | AARON, RIECHART, CARROL & RIFFLE | | ATTORNEY | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/11/2014 | 4/14/2014 | 1838228-INC131 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| LAW OFFICE OF JOSEPH ZOUCHA | | | REDWOOD CITY | CA / 94063 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | | | | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/11/2014 | 4/14/2014 | 1838228-INC130 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| HANSON, CRAWFORD, CRUM FAMILY LAW GROUP | | | SAN MATEO | CA / 94402 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | | | | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/11/2014 | 4/14/2014 | 1838228-INC129 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| ANTHONY GIEBS | | | REDWOOD CITY | CA / 94063 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | SELF EMPLOYED (SAME NAME) | | ATTORNEY | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/8/2014 | 4/8/2014 | 1837112-INC106 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| VIOLA LAW FIRM | | | SAN MATEO | CA / 94401 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | | | | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/6/2014 | 4/7/2014 | 1836432-INC90 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| STEVEN DYLINA | | | BURLINGAME | CA / 94010 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | STATE OF CALIFORNIA | | SUPERIOR COURT JUDGE | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/6/2014 | 4/7/2014 | 1836432-INC89 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| WILLIAM NAGLE | | | SAN BRUNO | CA / 94066 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | SELF EMPLOYED (SAME NAME) | | SPECIAL MASTER/MEDIATOR | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/6/2014 | 4/7/2014 | 1836432-INC88 |

| NAME OF CONTRIBUTOR | | | CITY | STATE/ZIP |
|---|---|---|---|---|
| LAW OFFICES OF ROSS, HACKETT, DOWLING, VALENCIA & WALTI | | | SAN BRUNO | CA / 94066 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | | | | |
| AMOUNT | TYPE | TRANS DATE | FILED DATE | TRANS # |
| $1,000.00 | INITIAL | 4/6/2014 | 4/7/2014 | 1836432-INC87 |

# EXHIBIT C

| ID NUMBER | EMPLOYER | OCCUPATION | |
|---|---|---|---|
| | SELF EMPLOYED (SAME NAME) | ATTORNEY | |
| AMOUNT | TRANS. DATE | FILED_DATE | TRANS # |
| $100.00 | 3/28/2014 | 7/27/2014 | 1852762-INC58 |

| NAME OF CONTRIBUTOR | | PAYMENT TYPE | CITY | STATE/ZIP |
|---|---|---|---|---|
| EDWARD R. ROJAS | | MONETARY | REDWOOD CITY | CA/94063 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | SELF EMPLOYED (SAME NAME) | | ATTORNEY | |
| AMOUNT | TRANS. DATE | | FILED_DATE | TRANS # |
| $100.00 | 3/25/2014 | | 7/27/2014 | 1852762-INC59 |

| NAME OF CONTRIBUTOR | | PAYMENT TYPE | CITY | STATE/ZIP |
|---|---|---|---|---|
| SILVESTRI SILVESTRI & MIALOCQ, A. P. C. | | MONETARY | REDWOOD CITY | CA/94063 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | | | | |
| AMOUNT | TRANS. DATE | | FILED_DATE | TRANS # |
| $500.00 | 3/28/2014 | | 7/27/2014 | 1852762-INC60 |

| NAME OF CONTRIBUTOR | | PAYMENT TYPE | CITY | STATE/ZIP |
|---|---|---|---|---|
| KRISTI SPENCE | | MONETARY | SAN MATEO | CA/94402 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | SELF EMPLOYED (SAME NAME) | | ATTORNEY | |
| AMOUNT | TRANS. DATE | | FILED_DATE | TRANS # |
| $100.00 | 3/28/2014 | | 7/27/2014 | 1852762-INC61 |

| NAME OF CONTRIBUTOR | | PAYMENT TYPE | CITY | STATE/ZIP |
|---|---|---|---|---|
| GIL DE VINCENZI | | MONETARY | SAN CARLOS | CA/94070 |
| ID NUMBER | EMPLOYER | | OCCUPATION | |
| | KALOBIOS | | DIRECTOR FACILITIES | |
| AMOUNT | TRANS. DATE | | FILED_DATE | TRANS # |
| $500.00 | 3/24/2014 | | 7/27/2014 | 1852762-INC63 |

| NAME OF CONTRIBUTOR | | PAYMENT TYPE | CITY | STATE/ZIP |
|---|---|---|---|---|

# APPENDIX F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

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Docket No. A149875

JEREMIAH F. MANNING,

Plaintiff-Appellant,

vs.

LUCY J. KIM,

Defendant-Respondent.

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On Appeal From The
Superior Court For The County Of San Mateo
The Honorable Susan M. Greenberg, Judge
Case No. FAM123613/123714

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# APPELLANT MANNING'S PETITION FOR REHEARING

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DAVID B. EZRA, ESQ. (SBN 149779)
KEITH DOLNICK, ESQ. (SBN 275780)
BERGER KAHN
2 Park Plaza, Suite 650
Irvine, California 92614-8516
Telephone: (949) 474-1880
Attorneys for Appellant-Petitioner
JEREMIAH F. MANNING

TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Cases



Statutes

## I. INTRODUCTION

There are very few situations that might cause the public to seriously question the appearance that a judge is a neutral finder of fact and an impartial applier of the law. One of these situations is where a judge accepts campaign contributions from the attorneys for one party appearing before her, and not from the other. The appearance of impartiality can be further threatened when a judge is required to disclose the campaign contributions, but does not do so in an accurate or timely manner. Ultimately, neither the appearance of neutrality, nor constitutionally-protected rights to fairness, equal protection and due process can be served by judges withholding campaign contribution information from parties for months when they are lawfully required to disclose it "at the earliest reasonable opportunity." In California, the withholding of campaign contribution information above $100 by a judicial officer is contrary to law.

Recognizing the potential for campaign contributions and their disclosure to affect the public's confidence that a judge is neutral and the

law is being fairly applied, in recent years the California legislature passed, and Governor Jerry Brown signed into law, amendments to California Code of Civil Procedure section 170. These amendments require each California Superior Court judge to disclose *all* campaign contributions above $100 from parties or their attorneys with matters before them to opposing parties and their attorneys "at the earliest reasonable opportunity after receiving each contribution."

The statute directs all judges to do this in open court on the record or as a minute order, and requires complete disclosure of all information specified in the statute. Significantly, California law does not make the necessary campaign contribution disclosure obligation dependent on a non-contributing party's due diligence. Rather it is solely a judicial obligation, and as such, this judicial obligation is also incorporated in the California Judicial Code at Canon 3(E), in addition to status as current and valid state law (CCP §170). Importantly,

these are remedial statutes that must be construed broadly in the public interest.

In this case, it is undisputed that the trial judge, Hon. Susan Greenberg, took campaign contributions from the Respondent's attorneys in amounts well over $100. She received these contributions in April 2014. She started presiding over this case several months later, in August 2014.

Between August 2014 and the commencement of trial in late September 2015, Judge Greenberg had both the obligation and numerous opportunities to disclose the campaign contributions. She did not follow the law. She did not disclose the campaign contributions. Instead, Judge Greenberg withheld this information while denying motion after motion, depriving Mr. Manning of the attorneys' fees he desperately needed to litigate his case through experienced counsel. Judge Greenberg rejected Mr. Manning's witnesses, while allowing all of Dr. Kim's trial witnesses.

Judge Greenberg also refused to enforce a pre-trial subpoena for the custody evaluator's source

documents, depriving Mr. Manning of meaningful cross-examination. Judge Greenberg then continued to unlawfully withhold the campaign contribution information, despite the ongoing disclosure obligation, through settlement negotiations, the start of trial, during opening statements, and after the taking of days and days of testimony.

Among other things, this deprived Mr. Manning of the fair exercise of his state right to peremptory challenge. Enacted in 1982, this right to the peremptory challenge of a judge is codified at section 170.6 of the California Code of Civil Procedure (Governor Jerry Brown presided over both the creation of California's judicial peremptory challenge right and the later campaign contribution disclosure amendments mentioned above.)

While the fair exercise of this peremptory challenge right is supposed to be afforded all litigants in California, here it was not. The Appellant was denied the full and fair exercise of his section 170.6 peremptory challenge right because Judge Greenberg failed to fully, completely and

timely disclose campaign contributions as she is required to do under section 170.1.

Reading these two statutory passages together, this Court should determine that it is neither just, nor procedurally fair, to only enforce a part of the law. These two passages (§170.1 and §170.6) are from the same Part, Title and Chapter of California law and they are interdependent and meant to be read together, and fairly applied together.

Mr. Manning is entitled to this procedural fairness and equal protection under both the United States Constitution and California state law. Mr. Manning was denied important rights because of Judge Greenberg's failure to follow the law.

Significantly, this is *not* a case such as *People v. Hull*, 1 Cal.4th 266 (1991), where the litigant's section 170.6 peremptory challenge was actually heard and decided by the trial court. Rather, in this case, Appellant never made his section 170.6 peremptory challenge -- and it was never heard or decided at the trial level -- all because Judge

Greenberg did not follow the law and did not timely disclose the campaign contributions made to her by the other side in this litigation "at the earliest reasonable opportunity."

Pursuant to California Rules of Court Rule 8.268, Appellant respectfully requests re-hearing because this Court's April 10, 2019 opinion neglects to address, discuss or decide whether Judge Greenberg's failure to accurately and timely disclose campaign contributions in contravention of state law denied Appellant due process by withholding critical information necessary to making a peremptory challenge decision, and whether her related conduct violated Appellant's constitutional right to equal protection of the law.

The Appellant asks: should a California Superior Court Judge be allowed to pick and choose when to disclose campaign contributions and how much to disclose in contravention of the law, and thereby manipulate or at least significantly impair the disqualification procedures, denying a litigant due process and equal protection in contravention of

the same state statute that prescribes the procedures for disqualification? The Appellant believes the answer is no, and since he raised his section 170.6 right squarely in Appellant's Opening Brief (AOB at 23, 47-53), by this rehearing petition he invites the Court to consider and rule on this question of first impression that concerns the interplay of the campaign contribution disclosure provision found at CCP section 170.1 and the peremptory challenge provision found CCP §170.6.

Mr. Manning also raises U.S. Constitutional issues of due process and equal protection that were similarly raised (AOB 46-48) with regard to this issue and with regard to Judge Greenberg's decision to recuse herself in the *Marriage of Stupp & Schilders*, 216 Cal.App.Unpub.LEXIS 8136, but glaringly, not in this case.

## II. FACTUAL STATEMENT

The trial court judge in this matter, Hon. Susan Greenberg, was elected as Superior Court Judge in San Mateo County in June 2014, just a few months prior to being assigned this case. During her

campaign for Superior Court Judge, public records indicate that Judge Greenberg accepted campaign contributions. They indicate that she received $2,000 in campaign contributions from Joseph Crawford, Esq. and his law firm Hanson Crawford Crumm. Mr. Crawford and the Crawford firm were the lead attorneys representing the Respondent, and represented her through the entirety of the pre-trial and trial proceedings in this matter.

Public records show that Judge Greenberg received these campaign contributions from the Crawford attorneys on April 10, 2014 and that she was assigned this case in late August 2014. She then conducted the first mandatory status conference on September 5, 2014 with the parties and the Respondent's attorneys, including the Crawford firm. She could have made lawful disclosure of the Crawford's firm's significant campaign contributions at that time. However, she made no disclosure whatsoever. Judge Greenberg could also have issued a minute order making the disclosure in the days and weeks that followed. She did not.

In fact, at no time during the assignment of the case to her, or at the first status conference with the parties, or at the numerous pre-trial appearances that followed over the next 13 months where she heard and decided litigated issues, did Judge Greenberg disclose the fact that she had received $2500 in campaign contributions from Respondent's lead attorneys. She did not make the disclosure prior to opening statements at trial in September 2015, the last possible time at which, under the statute, the Appellant could have made a section 170.6 peremptory challenge.

Throughout this period of time where required disclosure was not being made, as this Court has noted, Judge Greenberg also repeatedly denied Appellant attorneys' fees. She also excluded all of Appellant's witnesses while allowing all of Respondent's, and refused to enforce the subpoena for the custody evaluators source records, thus depriving Appellant of meaningful cross-examination.

Contemporaneous with Judge Greenberg's ongoing failure to disclose the campaign contributions from the Crawford firm, she was also assigned to another marriage dissolution proceeding, *Marriage of Stupp & Schilders*, 216 Cal.App.Unpub.LEXIS 8136. In the *Stupp* case, she also accepted campaign contributions from only one party's attorneys that she also failed to disclose to the other party in compliance with California law. In the *Stupp* case, both parties were represented by experienced family law attorneys admitted to the California bar.

As set forth in Appellant's opening brief, Judge Greenberg eventually recused herself from the *Stupp* case after the attorneys who had not donated to her campaign for Superior Court Judge objected to her failure to disclose the campaign contributions from opposing counsel. (AOB, 46).

Trial commenced in this case on September 28, 2015, just over 13 months after Judge Greenberg was assigned to it. The trial spanned 9 months and took approximately 15 days. At no time during this

period did Judge Greenberg recuse herself as she had done in the *Stupp* case.

Judge Greenberg bifurcated trial such that custody was tried first. Immediately prior to the commencement of the custody phase of trial Judge Greenberg presided over extensive settlement discussions between Appellant and the Crawford firm. At no time during these discussions did she disclose the campaign contributions from the Crawford firm. She continued to improperly withhold the campaign contribution disclosure through opening statements and through days and days of trial from late September 2015 until late October 2015.

When Judge Greenberg finally disclosed the campaign contributions from the Crawford firm in the last days of the custody trial, she again did not follow the law regarding required disclosure. She made an incomplete and inaccurate disclosure and she never fully corrected her disclosure as required by law in a minute order or on the record in open court.

Judge Greenberg did make certain corrections to her late October 2015 campaign contribution disclosure when she struck Appellant's 170.3 disqualification motion. However, these corrections still did not bring her disclosure into compliance with California law or the judicial canons.

## III. CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION REQUIRED TIMELY AND PROPER DISCLSOURE

As explained above, an issue the opinion neither addressed nor mentioned was the fact that Judge Greenberg's failure to timely disclose precluded Mr. Manning from exercising his peremptory challenge under Section 170.6 of the California Code of Civil Procedure.

### A. CALIFORNIA LAW REQUIRED JUDGE GREENBERG TO DISCLOSE CAMPAIGN CONTRIBUTIONS "AT THE EARLIEST REASONABLE OPPORTUNITY"

Judge Greenberg was required by law to disclose the campaign contributions to her from the Crawford firm because they were well in excess of

$100. As will be demonstrated below, she was required to make this disclosure "at the earliest reasonable opportunity," and as we will see, a fair and constitutionally-valid interpretation of this standard means that she should have done this before Appellant had to exercise his peremptory challenge.

California Code of Civil Procedure §170.1 is entitled "Disqualification of Judges" and the relevant passages state:

> (a) A judge shall be disqualified if any one or more of the following are true:
> ...
> (9) (A) The judge has received a contribution in excess of one thousand five hundred dollars ($1500) from a party or lawyer in the proceeding, and either of the following applies: (i) The contribution was received in support of the judge's last election, if the last election was within the last six years.(ii) The contribution was received in anticipation of an upcoming election. (B) Notwithstanding subparagraph (A), the judge

> shall be disqualified based on a contribution of a lesser amount if subparagraph (A) of paragraph (6) applies. (C) The judge shall disclose any contribution from a party or lawyer in a matter that is before the court **that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph. The manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics.** (D) Notwithstanding paragraph (1) of subdivision (b) of Section 170.3, the disqualification required under this paragraph may be waived by the party that did not make the contribution unless there are other circumstances that would prohibit a waiver pursuant to paragraph (2) of subdivision (b) of Section 170.3.

California Code of Civil Procedure, §170.1(a)(9.

The emphasized language of Section 170(a)(9 above makes reference to two other statutes/codes. The first is subdivision (f) of Section 84211 of the

Government Code and reference to it reveals that any amount of campaign contribution over $100 must be disclosed by a judge to a non-contributing party, even if it does not ultimately result in disqualification:

> (f) If the cumulative amount of contributions (including loans) received from a person is one hundred dollars ($100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:
>
> (1) His or her full name.
>
> (2) His or her street address.
>
> (3) His or her occupation.
>
> (4) The name of his or her employer, or if self-employed, the name of the business.
>
> (5) The date and amount received for each contribution received during the period covered by the campaign statement and whether the contribution was made in the form of a monetary contribution, in-kind contribution of goods or services, or a loan.

> (6) The cumulative amount of contributions.

Cal. Gov't Code, § 84211(f).

Most significant for this case, section 170.1 campaign contribution disclosure is prescribed in C.C.P. §170.1(a)(9) as "the same as that provided in Canon 3E of the Code of Judicial Ethics." Turning therefore to Canon 3E of the California Code of Judicial Ethics, we find that it is entitled "Disqualification and Disclosure" and it states:

> (1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.
>
> (2) In all trial court proceedings, a judge shall disclose on the record as follows:
>
> ...
>
> (iii) Timing of disclosure
>
> Disclosure shall be made **at the earliest reasonable opportunity after receiving each contribution** or loan.

> The duty commences no later than one week after receipt of the first contribution or loan, and continues for a period of two years after the candidate takes the oath of office, or two years from the date of the contribution or loan, whichever event is later.

California Code of Judicial Ethics, Canon 3(E) [emphasis added].

Reading the plain language of the California Code of Judicial Ethics Canon 3(E) together with section 170.1(a)(9) necessitates an inexorable conclusion: Judge Greenberg had a duty to disclose the campaign contributions she received from the Crawford firm "at the earliest reasonable opportunity" to the Appellant.

The Crawford firm made their contributions on April 10, 2014 and Judge Greenberg was assigned to this case in August 2014. She could have disclosed the Crawford contributions at the first mandatory status conference on September 5, 2014 when she met with the parties, but she did not. She could have disclosed it when she was denying Appellant's

motion for additional child and spousal support on December 9, 2014, but she did not. She could have disclosed it at the second mandatory status conference in early January 2015, but she did not. She could have disclosed it at the March 2015 hearing where she imposed sanctions on Appellant for making requests for documents that the Respondent's attorneys secreted and later sought to introduce at trial, but she did not. She could have disclosed it when she took away Appellant's custody in March 2015 because of the misrepresentations of Respondent's attorneys, but she did not. She could have disclosed it when she restored Appellant's custody in May 2015 because of Respondent's attorneys' misrepresentations, but she did not. She could have disclosed it at the hearing when she refused to enforce Appellant's valid subpoena for the custody evaluator's source documents, but she did not. She could have disclosed it in early September 2015 when she excluded all of Appellant's witnesses and admitted all of Respondent's witnesses, but she did not. She could have disclosed it in late

September 2015 when she presided over settlement discussions between the Appellant and the Crawford firm, but she did not. She could have disclosed it prior to opening statements at trial in late September 2015, but she did not. She could have disclosed it at any time during the days and days of trial in late September and October 2015, but she did not. She did not disclose the campaign contributions until late October 2015, and when she did, she did so inaccurately, and misrepresented them.

Judge Greenberg had numerous opportunities to comply with the law and disclose the Crawford firm's campaign contributions, but she did not until trial was well underway. Her conduct does not comport with due process, equal protection or the fair application of CCP Section 170 and it deprived Appellant of the fair exercise of his state peremptory challenge right.

## B. CALIFORNIA LAW GIVES APPELLANT A RIGHT TO PEREMPTORY CHALLENGE

California law guarantees a party the right to a judicial peremptory challenge. California Code of Civil Procedure section 170.6 provides all litigants in Superior Court with an unfettered right to a judicial peremptory challenge that is in addition to their section 170.3 right to removal for cause. In its April 10, 2019 opinion, this Court only considered Appellant's section 170.3 right and did not even mention Appellant's section 170.6 right, even though he squarely and explicitly raised it. Section 170.6 has several subsections, but two are central to Appellant's appeal and this petition for rehearing. The first is section 170.6(a)(1), which guarantees Appellant a neutral judicial officer:

> A judge, court commissioner, or referee of a Superior Court of the state of California shall not try a civil or criminal action or special proceeding of any kind or character, nor hear any matter therein that involves a contested issue of law or fact when it is established as

> provided in this section that the judge or court commissioner is prejudiced against a party or attorney appearing in the action or proceeding.

Cal. Civ. Proc. Code § 170.6(a)(1).

This first statutory provision codifies the bedrock guarantee to a neutral and impartial judge embedded in our United States Constitution. *See, e.g., Ward v. Village of Monroeville*, 409 U.S. 47 (1972) (impartiality of judicial officer an essential predicate for constitutional due process and even a statutory disqualification procedure is not enough to correct *prima facie* prejudice); *See also Schweiker v. McClure*, 456 U.S. 188 (1982); *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980).

The second central provision of the peremptory challenge statute is section 170.6(a)(2), which in the first sentence sets forth the predicate by which a party must establish the prejudice:

> A party to, or an attorney appearing in, an action or proceeding may establish this prejudice by an oral or written motion without prior notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee before whom the action or proceeding is pending, or to whom it is assigned, is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, **or believes that he or she cannot, have a fair and impartial trial or hearing before the judge**, court commissioner, or referee.

Cal. Civ. Proc. Code § 170.6(a)(2) [emphasis added].

This sub-section then goes on to set forth the various time frames and deadlines for bringing a section 170.6 motion.

In this case, Judge Greenberg did not make any disclosure of campaign contributions to Appellant prior to the expiration of these deadlines as she was required to do under section 170.1.

Appellant's position is that he, and indeed probably any reasonable person in a marriage dissolution proceeding, upon receiving a timely and accurate disclosure that the judicial officer had received thousands of dollars in campaign contributions from opposing counsel, would have exercised his state right to a peremptory challenge of that judge.

Additionally, for the purposes of evaluating whether Appellant received due process, Appellant maintains that Judge Greenberg's failure to follow the law on campaign finance disclosure represent a *prima facie* case of prejudice as that term is defined in the statute and under the United States Constitution. *Ward v. Village of Monroeville*, 409 U.S. at 48-49; C.C.P. § 170.6.

### C. IN THIS CASE, SECTION 170.1'S INDEPENDENT AND SEPARATE PROVISION FOR DISQUALIFICATION MUST BE CONSIDERED TO ENSURE REVIEW

Returning to Section 170.1 for the moment, we can additionally see that C.C.P. §170.1(a)(9)(B) provides an independent and separate basis for

review of disqualification where a judge unlawfully failed to disclose campaign contributions and a party was thus denied his peremptory challenge right. This provision states:

> (B) Notwithstanding subparagraph (A), the judge shall be disqualified based on a contribution of a lesser amount if subparagraph (A) of paragraph (6) applies.

Cal. Civ. Proc. Code § 170.1(a)(9)(B).

Additionally, subparagraph (A) of paragraph (6) states:

> (a) A judge shall be disqualified if any one or more of the following are true:
>
> ...
>
> (6) (A) For any reason:
>
> (i) The judge believes his or her recusal would further the interests of justice.

> (ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.
>
> (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

California Code of Procedure §170.1(a)(6)(A).

Reading these statutory passages together, there are two facts in this case that require a reviewing Court to conduct a due process review and reach the question of whether Judge Greenberg should have been disqualified under section (6)(A)(ii) or (iii), or recused herself under (6)(A)(i): first, Judge Greenberg did not follow the law and disclose the campaign contributions and second, this deprived Appellant of the fair and full exercise of his peremptory challenge right so that it was never brought or heard. Since there was an unlawful action on the part of Judge Greenberg, and since Appellant's peremptory challenge was never brought or decided by her, this Court has the responsibility to review the matter and conduct a due process

analysis. This Court should conduct this review and analysis, and given the facts, all three of the subsections (6)(A)(i), (6)(A)(ii) and (6)(A)(iii) warrant recusal/disqualification.

### D. SECTION 170 DISQUALIFICATION PROVISIONS, WHEN READ TOGETHER, WARRANT REVERSAL AND A NEW TRIAL FOR APPELLANT

When the aforementioned statutory provisions of California Code of Procedure Section 170 are read together, the question whether a party's due process right to an impartial and neutral judicial officer is violated where a Superior Court Judge unlawfully fails to disclose campaign contributions and deprives Appellant of the fair exercise of his peremptory challenge must be answered affirmatively. Here, Judge Greenberg did not disclose the campaign contributions from the Crawford firm totaling well over $100 as she was legally required to do. Appellant therefore did not have information that was required for him to make a fair judgment about exercising his peremptory challenge right, and

therefore this does not meet the conditions for procedural due process.

This Court has the opportunity to therefore review whether Judge Greenberg's conduct evinces that of an impartial judicial officer as required by California law, by the California Judicial Canons and by the public interest in justice. The Appellant submits that Judge Greenberg's delay in disclosing the campaign contributions, her inaccurate, untimely and incomplete disclosure of the campaign contributions, and the litany of rulings she made against the Appellant demonstrate that she was neither impartial nor neutral. Appellant therefore respectfully requests a new trial and that Judge Greenberg be disqualified and her orders vacated.

### E. PROCEDURAL DUE PROCESS -- AS GUARANTEED BY THE UNITED STATES CONSTITUTION -- WAS DENIED TO THE APPELLANT

In addition to the California state statutory provisions, this Court also should consider on rehearing that Judge Greenberg's conduct in this

case does not meet the standards for procedural due process under the United States Constitution. *Raley v. Ohio*, 360 U.S. 423, 436 (1959). In the first instance, there is serious question whether a judge that has accepted pecuniary benefit in the form of campaign contributions from one side's attorneys and not from the other can be considered impartial in the absence of a waiver by the non-contributing party. *Tumey v. Ohio*, 273 U.S. 510 (1927). In *Tumey*, the Supreme Court set down the rule that payments for the benefit of a judicial officer that would offer a "possible temptation" to the average man to rule one way or the other result in a lack of due process of law. *Tumey*, at 532-34. Here, it is undisputed that Judge Greenberg received campaign contributions totaling well over $100, and then failed to follow the state of California's statutory scheme to disclose these contributions. As discussed above, there is a strong argument that this is *prima facie* prejudice and therefore constitutionally deficient. *See Ward v. Monroeville*, *supra* at 61("[e]ven appeal and trial *de novo* will not cure a failure to provide a neutral and

detached adjudicator").

The circumstances of this case evidence that Appellant was denied procedural due process under the United States Constitution. The standard of review for procedural due process in state law cases involving child custody was elucidated by the Supreme court in *Little v. Streater*, 451 U.S. 1 (1981). Building on the *Matthews v. Eldridge* and *Boddie v. Connecticut* decisions, the Supreme Court's analysis first considered whether due process involving custody should receiving a heightened level of scrutiny since it concerns such a fundamental human right. *See Matthews v. Eldridge*, 424 U.S. 319 (1976); *Boddie v. Connecticut*, 401 U.S. 371 (1971). *See also M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) ("the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment," Ginsberg, J.). The Supreme Court was unanimous in finding that it should. *Little*, 452 U.S. at 5-12. The Court next applied the second factor: the likelihood the case would not be fairly adjudged

given the lower court's application of the procedures involved. The Court found the risk "not inconsiderable." *Id.* at 13-16. Finally, the Court applied the third factor: whether the State of Connecticut would be unduly burdened by requiring that fairness be enforced, and found that it would not, even though it would have to bear the cost of a diagnostic paternity test. *Id.*

Here, it is undisputed that the core issue of Appellant's case is custody and involves his relationship with his children. This satisfies the first part of the Supreme Court's test because this is one of the most compelling private interest. Second, for the State of California to have a statute that requires judicial officers to disclose campaign contributions in both its civil procedure and judicial canons, and then not enforce it when it deprives a party of the fair exercise of a state right to peremptory challenge, would be certain render the peremptory challenge right null and void in many cases. This situation would also be virtually certain to create a high risk that other judges would not bother to follow the law,

would not disclose campaign contributions in timely fashion (if at all), and thus would result in many litigants being denied a fair trial by an impartial adjudicator and being denied the fair exercise of their peremptory right. This meets the Appellant's burden on the second factor. Finally, as to the third factor, the cost to California would be negligible, since disclosure of campaign contributions by the judicial officer costs nothing except the Superior Court Judge's time and attention.

There is no doubt that Judge Greenberg accepted campaign contributions and did not disclose them as prescribed by statute until after Appellant's window for the fair exercise of his peremptory challenge right had closed. If this Court were to allow this to stand, then there is serious risk to the perceived impartiality of the judicial system. It is also not clear how appellate review of this issue could be avoided. The Appellant would be denied procedural due process since this review is offered for other instances of Section 170 violations. For these reasons, Appellant requests that a new trial be

granted and that Judge Greenberg's orders be vacated because of this constitutional defect.

### F. EQUAL PROTECTION OF STATE LAW – AS GUARANTEED BY THE UNITED STATES CONSTITUTION – WAS ALSO DENIED TO APPELLANT UNDER SECTION 170 ANALYSIS

A party's right to Equal Protection of the laws under the United States Constitution is regarded as the twin of the procedural due process right and Justice Ginsberg has noted that these principles often converge. *M.L.B.* at 116. As noted above, in this case there is heightened scrutiny because of the compelling private interest. Further, there is a high risk that if this Court refuses to enforce the campaign contribution disclosure provisions, some litigants would have the full benefit of section 170 procedures and others would not. This is both unfair and contrary to the requirements that all receive equal protection of state law. This is another basis for Appellant's requests that a new trial be granted and that Judge Greenberg's orders be vacated.

## IV. EQUAL PROTECTION UNDER THE UNITED STATES CONSTITUTION REQUIRED JUDGE GREENBERG TO RECUSE HERSELF, JUST AS SHE DID IN THE *STUPP* CASE

As set forth in the Appellant's Opening Brief, during this litigation, Judge Greenberg also was assigned the *Stupp* case (another marriage dissolution and custody matter where the attorneys for one party made significant campaign contributions to her, and the other did not). (AOB 46-48). When this fact was uncovered by the non-contributing attorneys, Judge Greenberg opted to apply Section 170 differently and recused herself in the *Stupp* case, even though the situations were the same as this case: her improper failure to timely disclose campaign contributions. As set forth in the opening brief, and under the Constitutional Due Process and Equal Protection law set forth above, this resulted in her unfair and unequal application of Section 170 to the Appellant's case.

## V. CONCLUSION

Mr. Manning respectfully asks this Court to grant rehearing to review his argument relating to the issues raised in this petition and in his opening brief, particularly the fact that the improper failure to timely disclose campaign contributions deprived him of an opportunity to exercise a peremptory challenge under section 170.6. The Court should reverse the September 14, 2016 judgement, so that a truly neutral judge can decide the child custody issues.

Respectfully Submitted By:

s/DBE/

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## CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 5,618 words. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By:

s/DBE/

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