

FILED

MAR 23 2005

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
DEPUTY

VALERIE RALPH

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY

EUGENE FORTE,)	Case No. MAR125367
)	
Plaintiff,)	RULING ON CHALLENGE
)	FOR CAUSE AGAINST
)	COMMISSIONER RICHARD
)	RUTLEDGE.
)	
DEAN FLIPPO, et al.)	
)	
Defendants,)	
)	
_____)	

Plaintiff Eugene Forte filed, January 5, 2005, an unverified challenge for cause against Commissioner Richard Rutledge pursuant to California Code of Civil Procedure Section (CCP §) 170.3 (c)(1). He has alleged 34 separate grounds of disqualification. Commissioner Richard Rutledge filed an unverified response January 12, 2005.

CONCLUSION

There are no facts presented to conclude that what Commissioner Rutledge may have done or not done would lead to a conclusion that Commissioner Rutledge should be disqualified. Even though Plaintiff's first ground for disqualification sounds like a CCP §170.6 peremptory challenge, it is not supported with facts which are required for a CCP §170.1 challenge

DISCUSSION

Of the seven grounds of disqualification listed in CCP §170.1 only CCP§170.1 (c)(6)(C) appears applicable to Plaintiff's challenge. CCP§170.1 (c)(6)(C) reads: "... a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Pursuant to CCP §170.5(a) "'Judge' means

judges, ... court commissioners and referees.”

Plaintiff in several places in his challenge alludes to Commissioner Rutledge as not being able to be impartial in this case. However, there are no facts in the motion to support such a conclusion. Most, if not, all the facts included in Plaintiff’s motion are irrelevant in this motion to disqualify Commissioner Rutledge. Plaintiff’s statement that Commissioner Rutledge should be disqualified because he disqualified himself in the case of *Loop v. Forte* MAR115437 is misplaced because in that case the recusal was based on the fact Plaintiff Loop had acted as a judge pro tem in the Salinas courts. The recusal was not associated with the Plaintiff in this case. The fact that a recusal is directed to one of the parties does not mean that the judge must be disqualified in any other cases involving the other party.

The 34 grounds alleged by Plaintiff are:

1. The “Commissioner is prejudiced against Plaintiff or the interests of said Plaintiff in this action.”

2. The “Commissioner previously filed a self-disqualification according to California Code of Civil Procedure §170.1 in the case *Loop v. Forte* MAR115437.”

3. ...”Commissioner Rutledge had given the verdict in a small claims action to the plaintiff, Bill Packwood, that did not appear at trial in *Packwoods v Forte* SSC107870. Commissioner Rutledge had done this after determining at the previous hearing that Defendant Forte did not owe any money to Packwood.”

4. “Plaintiff had an investigation of the matter initiated of both Judge Robert Moody and Commissioner Rutledge, after Judge Moody met with the plaintiff Packwood ex parte to defendant Forte, to examine evidence and take testimony.”

5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, are irrelevant and not grounds for disqualification of Commissioner Rutledge.

9. “Such facts would cause any reasonable person to doubt if Commissioner Rutledge could be an impartial Judge in the subject case due to the investigation that Commissioner Rutledge knows plaintiff initiated against him, after which Commissioner Rutledge disqualified himself in the case of *Loop vs. Forte* MAR115437.”

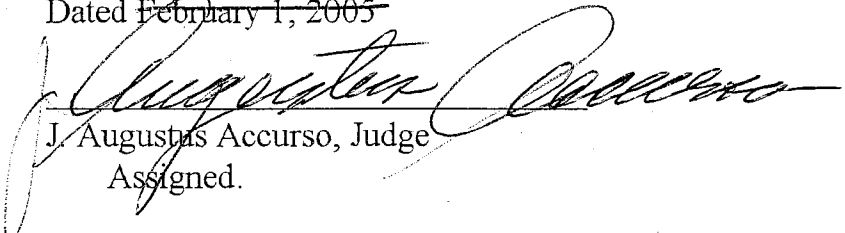
10. "A reasonable person would doubt that Commissioner Rutledge is less biased in 2005 than in 2001, and therefore should disqualify himself in the interests of fairness to plaintiff in the subject case."

34. "It is clear that Commissioner Rutledge is not a wholly dis-interested party to plaintiff Forte and should be disqualified."

The allegations in 1, 2, 3, 4, 9, 10, 34 are conclusions unsupported by any facts.

March 21, 2005

Dated ~~February 1, 2005~~


J. Augustas Accurso, Judge

Assigned.

SUPERIOR COURT OF CALIFORNIA COUNTY OF MONTEREY

Eugene Forte, Plaintiff

Vs.

Dean Flippo et al, Defendant(s)

Case Number: MAR125367

**CERTIFICATE OF MAILING
C.C.P. SEC. 1013a**

I do hereby certify that I am not a party to the within stated cause and that on March 25, 2005. I deposited true and correct copies of the following document(s):

**RULING ON CHALLENGE FOR CAUSE AGAINST COMMISSIONER RICHARD
RUTLEDGE**

in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses, as hereinafter set forth:

Eugene Forte
27438 Vista del Toro
Salinas, CA 93908

DA Dean Flippo
Via Interoffice Mail

ADA Terry Spitz
Via Interoffice

Dated: March 25, 2005

Lisa Galdos, Clerk of the Court

By 
Deputy, Valerie Ralph