

SANDRA SLATON  
THOMAS C. HORNE  
KRISTIN ROEBUCK BETHELL  
MATTHEW J. MONACO



**HORNE SLATON, PLLC**  
**Scottsdale Spectrum**  
**6720 N. Scottsdale Rd., Ste. 285**  
**Scottsdale, Arizona 85253**

**Tel. 480/483-2178**  
**Fax. 480/367-0691**  
www.horneslaton.com  
slaton@horneslaton.com

December 16, 2020

**Via FedEx and Fax**

Commission on Judicial Performance  
455 Golden Gate Avenue, Suite 14400  
San Francisco, California 94102  
Fax: (415) 557-1266

**Re: The Hon. David J. Cowan, Stanley Mosk Courthouse  
Los Angeles County Superior Court**

To Whom It May Concern:

This letter is written on behalf of Bradford Lund (“Mr. Lund”) and his counsel undersigned, Sandra Slaton (“Ms. Slaton”). It is joined in by Sherry Lund<sup>1</sup> and Jim Dew, co-trustees of a trust (“‘92 Trust”) established by Mr. Lund with his own funds, together with their respective counsel. We ask the Commission on Judicial Performance, based on indisputable facts, to find that The Hon. David J. Cowan, Los Angeles County Superior Court, has violated multiple Canons of the California Code of Judicial Ethics (hereafter, “Judicial Canons”) and to remove him from office. Judge Cowan has violated five of the six Judicial Canons when he issued his November 12, 2020 Order to Show Cause and related conduct.

**I. INTRODUCTION AND BACKGROUND:**

One of the most basic protections our country has in preserving our democracy, is our confidence in the integrity of the judicial branch. The judicial system must be free in reality as well as in appearance, from prejudice, personal agenda, or conflict of interest. Indeed, there is nothing more important than preserving the integrity of the court system.

This request for the removal of a sitting judge for multiple violations of California’s Canons of Judicial Ethics is not made lightly, but with great reluctance. Nevertheless, in order to preserve the sanctity of the judiciary and to protect all who come before courts seeking justice based upon facts, we feel compelled to bring this judicial complaint for the removal of Judge Cowan.

This matter stems from a probate action in which Mr. Lund, the grandson of Walt Disney, has been fighting for years to remove his hostile Trustees who have committed

---

<sup>1</sup> A separate judicial complaint will be filed as well on behalf of Sherry Lund through her own counsel.

financial and fiduciary violations against him. Mr. Lund has also been fighting to receive his Birthday Distributions<sup>2</sup> from his Trust, distributions that are mandatory, which those hostile Trustees have refused to give him. These distributions would drastically affect the amount of trustee fees that that hostile Trustees receive from the trusts. One of the Trustees' strategies for withholding the distributions from Mr. Lund has been to claim he is incapacitated and, therefore, unable to meet the criteria set forth in the Trust for receiving the funds. This litigation has gone on for many years with the Trustees using every tactic possible to attack both Mr. Lund and his entire family. After these hostile Trustees conspired with estranged family members to initiate Arizona guardianship/conservatorship proceedings against Mr. Lund, which lasted over seven years, he was vindicated and found competent by the Arizona court. The judgment, rendered by the Hon. Judge Robert H. Oberbillig after an extensive trial with expert witnesses and Mr. Lund himself testifying, dismissed all proceedings and confirmed that Mr. Lund has capacity. The Arizona Judgment was unsuccessfully appealed by the estranged family members all the way up to the Arizona Supreme Court. However, that Judgment was completely ignored by Judge Cowan and contradicted his question about Mr. Lund's lack of capacity. Additionally, Judge Cowan ignored the California Statement of Decision, rendered by the Hon. Mitchell L. Beckloff on June 3, 2014, also finding Mr. Lund had sufficient capacity to be able to appoint new trustees, with affirmative findings, after an extensive trial, including regarding his "intelligence." Without any hearing or notice, also without a trial, on September 27, 2019, Judge Cowan appointed a limited purpose guardian ad litem over the case. For over five years Mr. Lund has repeatedly requested a trial on his claims against the hostile Trustees.

In a recent culmination of a continuing pattern of judicial misconduct, Judge Cowan issued an OSC against Ms. Slaton as to why she should not be disqualified as Mr. Lund's lead counsel. As a backdrop to this OSC against Ms. Slaton, at the time of issuing the Order, Judge Cowan was (and still is) a defendant in a federal civil rights case (Bradford Lund v. The Honorable David J. Cowan, et al., case no. 2:20-cv-1894-SVW-JC) which is presently on appeal in the Ninth Circuit (case no. 20-55764). Ms. Slaton, on behalf of Mr. Lund has also filed three recusal statements against Judge Cowan for his bias and prejudice against Mr. Lund, herself, and others. The first one, filed on October 16, 2020, was stricken on October 26th by Judge Cowan and all writs were subsequently denied. The next two were most recently stricken by Judge Cowan just before he finally transferred the matters

---

<sup>2</sup> The Sharon D. Lund Residuary Trust fbo Bradford Lund contains a section which requires the Trustees to make distributions of Trust Principal to the beneficiary unless the Trustees determine that the beneficiary is not financially mature enough to handle the substantial distributions. Those distributions are to occur on the beneficiary's 35th, 40th, and 45th Birthday.

before him to another judge. The last order striking Mr. Lund's statement for recusal was filed on the same date that the OSC against Ms. Slaton was filed.

## II. THE LEGAL STANDARD AND OVERVIEW OF ALLEGATIONS:

Censure or removal from office is appropriate when the judge fails to meet the standard by engaging in willful or prejudicial conduct. The charge of wilful misconduct refers to "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith." *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1304. The charge of prejudicial conduct comprises that which the judge undertakes in good faith, but which would nonetheless appear to an objective observer to be unjudicial and harmful to the public esteem of the judiciary. *Ibid.*

The Judicial Canons require that a judge must preside over cases with neutrality and fairness, avoiding any shred of personal bias, prejudice, animus, or conflict of interest. The standard for removal of a judge must be exceedingly high. It must be more than mere disagreement with the judge's views of the facts and evidence. There must be a substantial offense to the standards of integrity required of a judge.

That high standard has been met here. By indisputable evidence in the public record, Judge Cowan has demonstrated a willingness to make knowingly false statements, personal attacks on counsel and her motives together with attacks on Mr. Lund himself, and the misuse of his powers by issuing the OSC just as he was finally removing himself from the case.

Specifically, this letter will establish that there are at least **three grounds** that equate to multiple violations of the Judicial Canons, and, thus, justify Judge Cowan's permanent removal from office:

- (1) ***Judge Cowan has made willfully false, misleading, or reckless statements in his recently issued OSC against Mr. Lund's lead counsel, Ms. Slaton, as well as in prior court hearings and written opinions.***
- (2) ***Judge Cowan has shown personal animus against Mr. Lund and his lead attorney, Ms. Slaton, in his OSC ordering her to show cause as to why she should not be disqualified.***
- (3) ***Judge Cowan, in issuing his OSC against Ms. Slaton has embroiled himself as an adversary in the litigation. Judge Cowan has failed to protect Mr. Lund and his assets from the hostile Trustees.***

It is alleged as follows:

- Judge Cowan inappropriately invaded the attorney-client relationship by issuing an OSC against Ms. Slaton based upon his own concern over a conflict of interest that does not exist and that has no basis in fact.
- Judge Cowan improperly invaded the attorney-client relationship by inappropriately questioning the strategy of an attorney during the litigation.
- Judge Cowan violated federal law and the Constitution by discriminating against Mr. Lund for a false perception that he suffered from Down syndrome despite irrefutable genetic testing evidence from an independent laboratory that Mr. Lund does not, in fact, suffer from Down syndrome.
- Judge Cowan improperly embroiled himself in the litigation by stating his own personal concerns based upon his own false statements:
  - The false statement that Dr. Mark Winograd (the husband of Ms. Slaton) was a material witness in Arizona with no evidentiary support. There is no evidence in the record, whatsoever, that Dr. Winograd was ever a witness in any proceeding involving Mr. Lund. He was not ever been a witness. Dr. Winograd merely ordered the genetic test from an independent laboratory in Massachusetts which performed the test and whose medical team signed off on the results that proved Mr. Lund could not suffer from Down syndrome. Thus, Judge Cowan's defense that he only used the word "may" ignores the fact that he knew the word "may" was contradicted by the genetic test. However, there is no evidence or support in the record that an independent test, ordered by Dr. Winograd, would ever lack credibility or veracity. Dr. Winograd did not perform the test or contribute to the results thereof in any way whatsoever.
  - The false statement that Ms. Slaton does not have any ethically required waivers. Ms. Slaton does not believe there is any conflict in her representation and would have never accepted such if there were a conflict of interests. Ms. Slaton represented Sherry Lund (and Ms. Lund's late husband, William Lund) in the Arizona proceeding where they were completely aligned with Mr. Lund in every way, including the fact that they were parties to a common interest agreement. Moreover, Ms. Slaton has provided in numerous written pleadings and avowed orally that she has the ethically required signed waivers from Mr. Lund together with Sherry and William Lund.

- The false statement that Ms. Slaton interfered with the assignment of the court-appointed limited Guardian ad Litem (“GAL”), when the limited GAL made no such allegation in any of her reports to Judge Cowan.
- The false statement that the limited GAL became unwilling to opine on the conflicts of Mr. Lund’s stepmother, as a trustee, or Ms. Slaton’s conflicts, as an attorney that formerly represented Sherry Lund, out of fear of being the “next target” of Sherry Lund and Ms. Slaton, when there is nothing in any of the limited GAL’s reports to support such a statement.
- The false statements that Mr. Lund is being unduly influenced by Sherry Lund despite the undeniable fact that no court, anywhere, has ever found any evidence of undue influence, and the fact that limited GAL stated the same exact fact.
- The false statement that Sherry Lund is directing the litigation, not Mr. Lund, without any support in the record. Judge Cowan’s false references to Sherry Lund’s undue influence are directly contrary to findings made by Judge Beckloff in his 2014 Statement of Decision as well as by Judge Oberbillig in his 2016 Arizona Judgment.
- The false statement regarding the findings of Judge Beckloff after the 2013 California trial which, contrary to Judge Cowan’s statements, ultimately found that Mr. Lund had capacity and was competent as stated by the limited GAL in her report.
- Judge Cowan has also improperly injected his own beliefs and concerns into the case instead of remaining the constitutionally required neutral and detached fact-finder.

It is submitted that Judge Cowan has used this OSC, together with the Ruling on Motion to Seal, as unlawful retaliation for Mr. Lund filing a federal complaint alleging that Judge Cowan violated his civil rights and the Americans with Disabilities Act.

Judge Cowan’s willful and prejudicial conduct, as fully described below should result in this Commission filing a complaint requesting his removal from office. As stated in *Furey*, “A judge’s behavior must constantly reaffirm fitness for the serious responsibilities of judicial office.” *Furey, supra*, 43 Cal.3d at p. 1304 (removing judge from office for multiple charges of willful and prejudicial misconduct).

The federal § 1983 case and recusals against Judge Cowan were necessitated because he has continued to violate Mr. Lund’s constitutional rights *inter alia* by falsely

accusing Mr. Lund of having Down syndrome in open court, in the face of indisputable facts otherwise, appointing a limited purpose GAL without any notice or hearing, and interfering with Mr. Lund's right to counsel. It is submitted that the OSC against Ms. Slaton is in direct retaliation for having named Judge Cowan as a defendant in a federal action and in seeking his recusal.

In the OSC itself, Judge Cowan has misused his office and violated at least five of six Canons of Judicial Ethics. Moreover, this matter has been pending for over six (6) years and Judge Cowan has refused to set a trial on Mr. Lund's claims despite Mr. Lund's repeated and unwavering efforts to bring this matter to a trial. The specific Canons of Judicial Ethics that Judge Cowan has violated are:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 3. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Canon 4. A judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.

Canon 6. Compliance with the Code of Judicial Ethics.

As will be further detailed below, on multiple occasions Judge Cowan lashed out personally against Ms. Slaton in open court and in his written opinions, such as describing Ms. Slaton in this OSC of engaging in "scorched earth litigation" (showing an obvious double standard by ignoring at least, if not more, "scorched earth litigation" tactics by the attorneys for the hostile Trustees). Judge Cowan has insulted, humiliated, and blatantly presented false representations in open court and written rulings available to the public about Mr. Lund.

### **III. THE SPECIFIC ALLEGATIONS OF MISCONDUCT:**

A. ***In His OSC Against Ms. Slaton, Without Any Standing To Do So, Judge Cowan Willfully, Falsely, And Prejudicially Asserts That She Has A Conflict And That Mr. Lund Did Not Give Informed Consent To Such Alleged Conflict:***

Judge Cowan has falsely alleged *sua sponte* that Ms. Slaton has some form of conflict of interest and should not represent Mr. Lund because of such conflict. Judge Cowan issued an OSC based upon *his own* belief and concern that Ms. Slaton has a conflict

because she previously represented Mr. Lund's stepmother Sherry Lund. However, neither Mr. Lund, nor Sherry Lund, believe there is any conflict of interest. Further, Mr. Lund has never made any allegations of conflict of interest on the part of Ms. Slaton. Mr. Lund and his stepmother are parties to a common interest agreement which requires a common legal, factual, or strategic position. Out of an abundance of caution, as is Ms. Slaton's practice whenever she has represented more than one party in a family, even in different proceedings, Ms. Slaton obtained written waivers from Mr. Lund together with Sherry Lund and her late husband, William Lund. Moreover, at all times Mr. Lund has been represented by independent counsel, even in the Arizona proceeding where Ms. Slaton represented Sherry Lund and the late William Lund. Ms. Slaton has never represented Bradford Lund, Sherry Lund and/or William Lund in the same proceeding.

As held in *Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356, in the absence of an attorney-client relationship or some expectation of confidentiality, a party has no authority to move to disqualify opposing party's attorney. This same reasoning has been applied to judicial invasions into attorney-client relationships. Judge Cowan's OSC is an improper invasion into the attorney-client relationship between Mr. Lund and Ms. Slaton. The California Supreme Court has determined such invasions as cause to remove a judge from the bench. *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 281 (judge removed from office for improperly invading into the attorney-client relationship). In the OSC, Judge Cowan *inter alia* stated:

- "First the Court is concerned whether Brad gave his informed consent to counsel's conflict of interest here arising from previous representations of his step-mother, Sherry." (OSC, p. 2:7-8, attached as **Exhibit 1**).

Judge Cowan's statement ignores the indisputable record evidence to the contrary. In the Reply In Support of Bradford D. Lund's Response To Court's OSC Re Guardian Ad Litem, Judge Cowan was first alerted to the fact that Ms. Slaton was acting as independent counsel for Mr. Lund and had complied with all of her ethical requirements in her representation. (*Reply*, 3/18/2019, p. 3:4-9, attached as **Exhibit 2**): "[C]ounsel undersigned [Ms. Slaton] together with all former counsel referred to by the Trustees, avow that all their ethical requirements have been complied with and they are (or have been) independent counsel for Mr. Lund at all times." (*Id.*; see also *Reply*, Exhibit 2). Again, Ms. Slaton informed the Court that Mr. Lund and his family had signed waivers addressing these conflict issues. (*Preliminary Objections*, 2/5/2020, p. 9:4-26, attached as **Exhibit 3**). Specifically, the *Preliminary Objections* read in pertinent part: "Ms. Slaton had valid waivers signed by all of the Lund family including Mr. Lund, which was brought to the

attention of this Court[.]” (*Id.* at p. 2-3). Furthermore, the *Preliminary Objections* specifically quotes the email sent by Ms. Slaton to Ms. Lodise (the limited GAL) concerning the waivers. (*Id.* at p. 9:17-25). That actual email was attached to the *Preliminary Objections* as an Exhibit and is part of the record. For the third time, Ms. Slaton alerted Judge Cowan of the signed waivers at the February 28, 2020 hearing. (Reporter’s Transcript, 2/28/2020, p. 16:17-17:14, attached as **Exhibit 4**). Yet again, Ms. Slaton represented to Judge Cowan that she “[b]elieves that she has answered all of the GAL’s questions concerning conflict issues and appropriate waivers and has shared such information with the limited GAL.” (*Reply to the Trustees’ Response To Joint Objections to the Revised Settlement Agreement*, 8/26/2020, p. 39:20-22, attached as **Exhibit 5**).

Mr. Lund chose Ms. Slaton as his lead counsel because of Ms. Slaton’s personal knowledge of the eleven (11) year history dealing with the hostile Trustees and their attacks on Mr. Lund. The hostile Trustees have attacked Mr. Lund in both California and Arizona, and Ms. Slaton has knowledge of all of the hostile Trustees’ actions.

Clearly, Judge Cowan has willfully chosen to ignore specific evidence that was directly presented to him together with the 2014 Statement of Decision and 2016 Arizona Judgment which clearly establishes that Mr. Lund is a competent adult.<sup>3</sup> Ignoring evidence and the law can result in judicial disqualification. *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1320. There, the judge was disqualified for failing to consider the record evidence of multiple orders against a party and criticized the approach to litigation on the record. The *Tharp* court not only considered this an abuse of discretion, but also held that the judge should be disqualified.

Judges have been removed from the bench for willful misconduct and conduct prejudicial to the administration of justice. *Furey v. Commission On Judicial Performance* (1987) 43 Cal.3d 1297, 1303. In *Furey*, the judge gave unsolicited advice on the sentencing of a defendant recommending a stiffer sentence. *Furey*, 43 Cal.3d at p. 1308-09. In the present case, it appears that Judge Cowan is giving unsolicited advice to the next judge regarding how to handle and rule on the case.

Judge Cowan made the following improper statement regarding Sherry Lund’s purported improper role in the case:

---

<sup>3</sup> Instead, Judge Cowan relies on the unverified, unsworn, and wholly unauthenticated Memorandum of Facts, and exhibits thereto, in making his claims. It was specifically brought to Judge Cowan’s attention that the overwhelming majority of the exhibits in the hostile Trustees’ Memorandum of Facts was presented and rejected by both the California court (in the 2013 trial) and the Arizona court (in the 2016 trial). (**Exh. 2**, p. 1 and Exhibit 1). The exhibits that were not presented and rejected by either court have nothing to do with Sherry Lund or any undue influence.



- “Sherry [Lund], due to her close relationship with Brad and her dual role as a successor trustee of the 1992 Trust and Brad’s attorney-in-fact for various purposes, is a significant player in this case whose interests are not necessarily aligned with Brad’s on all matters.” (**Exh. 1**, p. 2:13-15)

Judge Cowan’s statement is not only false, but the statement has no support in the record. In *Adams*, the judge was removed from the bench for false statements. *Adams, supra*, 10 Cal.4th at p. 914-15.

There are five cases pending before Judge Cowan involving Mr. Lund as beneficiary.<sup>4</sup> Sherry Lund is not a party at all in four of those five cases. She is only a party in Case No. Bp 129815, the 1992 Trust case, in her capacity as one of the co-trustees, and not in her individual capacity. Furthermore, Judge Cowan fails to uphold the integrity of the judiciary when he refuses to acknowledge that Sherry is only a party to the 1992 Trust case, and only in her capacity as a trustee. Therefore, her personal interests are not at issue, but rather she is there to support the interests of her beneficiary, Mr. Lund. Finally, Judge Cowan issued an OSC attempting to remove Ms. Slaton based upon his statement that “interests are not necessarily aligned” but provides no indication how or why those interests are not aligned. (**Exh. 1**, p.2:15). Moreover, Judge Cowan directly contradicts his own statement by the opposite one which reads in pertinent part: “Sherry’s counsel and Brad’s counsel have consistently aligned in this litigation[.]” (**Exh. 1**, p. 8:6).

Judge Cowan goes on to make the following statements involving the purported lack of Mr. Lund’s lack of informed consent:

- “There is no evidence that Brad gave written consent for this potential conflict or at least written acknowledgement of that prior representation” (**Exh. 1**, p. 3:4-5); and “While Ms. Slaton has previously claimed that such written waivers exist, she has never provided those waivers and has not shown that Brad gave informed consent. (**Exh. 1**, p. 3:7-8).

Again, these statements, violate Canons 1 and 3. Judge Cowan’s false statements destroy the integrity of the judiciary and fail to show that he is performing his duty impartially, competently, and diligently. *Adams, supra*, 10 Cal.4th at p. 914-15 (removing

---

<sup>4</sup> These cases are *In re Lillian B. Disney Trust fbo Bradford D. Lund* (Case no. BP 055495); *In re Sharon D. Lund Residuary Trust fbo Michelle A. Lund* (Case no. BP 119204); *In re Sharon D. Lund Residuary Trust fbo Bradford D. Lund* (Case no. BP 119205); *In re Bradford Disney Lund 1992 Trust* (Case no. BP 129814); and *In re Sharon D. Lund 1986 Irrevocable Trust fbo Bradford D. Lund* (Case no. BP 129815).

judge from office for false statements). Judge Cowan was aware prior to making the above false statement that Ms. Slaton had provided Ms. Lodise with her actual waivers.

Judge Cowan also improperly and without any support whatsoever states:

- “Further, the Court is concerned that Ms. Slaton would be hesitant to argue that a former client unduly influenced their current client where the current client is the former client’s stepson.” (**Exh. 1**, p. 4:15-17).

Judge Cowan has made a false representation which warrants his removal from the bench. *Adams, supra*, 10 Cal.4th at p. 914-15. There has never been a court that has indicated that Sherry Lund (or her late husband, William Lund) ever unduly influenced Mr. Lund. In Judge Beckloff’s decision, the Court stated: “There was no direct evidence that Mr. Lund was unduly influenced to exercise the Trustee Removal Power.” (*Statement of Decision*, p. 33, attached as **Exhibit 6**). The Arizona Judgment reads in pertinent part: “The weight of credible evidence does not support Petitioners’ claim that Respondents are out to get Bradford Lund’s funds or have wrongfully benefited from or improperly used his funds.” (Arizona Judgment, 7/21/20216, p. 5 ¶ 17, attached as **Exhibit 7**). Yet again, Judge Cowan has gone beyond his limits of permitted inquiries when he delved into the confidentiality of the lawyer/client relationship. *Furey, supra*, 43 Cal.3d at p. 1318; *Geiler v. Commission On Judicial Qualifications* (1973) 10 Cal.3d 270, 284 (discussing CCP § 284 and determining that the judge should be removed from the bench for improperly interfering with the attorney-client relationship).

Most troubling is that Judge Cowan’s OSC is an improper invasion into the attorney-client relationship. *Geiler v. Commission On Judicial Qualifications*(1973) 10 Cal.3d 270, 284; *Feury v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1318). Just as the judges in *Furey* and *Geiler* were removed from office on this basis, so too, in the present action, Judge Cowan should be removed from the bench.

Judge Cowan made the following improper statement regarding Mr. Lund’s informed consent:

- “Further, it is unclear whether Brad could give informed consent” (**Exh. 1**, p. 3:14).

Judge Cowan’s statement violates Canons 1 and 3. Again, Judge Cowan is not upholding the integrity of the judiciary when he specifically makes false representations of the record in this matter and ignores evidence to the contrary that exists in real time. Once

again, Judge Cowan has *sua sponte* presumed that Mr. Lund did not have capacity to give his informed consent without ever hearing even one witness, without ever conducting any evidentiary hearing, and without ever even communicating with Mr. Lund period.

Judge Cowan uses the Statement of Decision issued by Judge Beckloff after the 2013 trial on *inter alia*: (1) whether the Trustees breached their fiduciary duty by not making the Birthday Distributions to Mr. Lund; and (2) whether Mr. Lund had the capacity to exercise the Trustee Removal Power in the 1986 and 1992 Trusts. Judge Beckloff cherry-picks sentences from the portion of Judge Beckloff's decision regarding the breach of fiduciary duty, while completely ignoring the findings made on Mr. Lund's capacity. In the Statement of Decision regarding Mr. Lund's capacity, Judge Beckloff directly addressed the Trustees' attack on Mr. Lund's capacity including defining capacity and finding that Mr. Lund was presumed to be competent and none of the Trustees' evidence overcame that presumption. (*Statement of Decision*, p. 31-32, attached as **Exh. 6**). As Judge Beckloff later found at page 32, that *very same evidence* "did not establish that Mr. Lund lacked capacity such that he could not make independent decisions in connection with the Trustee Removal Power and that he did not understand the rights, duties, responsibilities, benefits and reasonable alternatives involved in or affected by a decision to exercise the Trustee Removal Power." (**Exh. 6**). On page 33, Judge Beckloff specifically found: "There is no direct evidence that Mr. Lund was unduly influenced to exercise his Trustee Removal Power." (**Exh. 6**). And at page 35, Judge Beckloff concluded that "Mr. Lund's exercise of the Trustee Removal Power was knowing, voluntary and intelligent." (**Exh. 6**). Judge Cowan ignores the fact that only Judge Beckloff's decision on the Trustees' breach of fiduciary duty was appealed, not Judge Beckloff's decision on capacity. For many years Mr. Lund has approved the appointment and replacement of trustees on his various trusts including the corporate trustees. Indeed, the hostile Trustees sought his specific approval on settlement with U.S. Trust after they resigned and were replaced as trustee. Mr. Lund specifically signed off on that settlement and waiver of claims against Bank of America, which was the successor to U.S. Trust.

Despite the fact that Judge Cowan relies on the very same evidence that was presented to Judge Beckloff, Judge Cowan ignores the fact that Judge Beckloff rejected that very evidence at page 32 of the Statement of Decision. (**Exh. 6**, p. 32). Finally, Judge Cowan specifically ignores the fact that there was no GAL appointed over Mr. Lund together with the fact that Mr. Lund personally testified as a witness during the 2013 trial. (Cal. Evid. Code §700 *et seq.*).

Judge Cowan further ignores all of the findings contained in Judge Beckloff's June 3, 2014 Statement of Decision, and the July 21, 2016 Arizona Judgment. Judge Oberbillig

specifically found that Mr. Lund had capacity, was competent, and was not in need of a guardian or conservator, limited or otherwise.<sup>5</sup> Judge Oberbillig also found: “Bradford Lund’s treating physicians, Dr. Duane and Dr. Chung, were the only neurologists who have examined Bradford Lund since May 2011 and both testified Bradford Lund was not incapacitated and not in need of a guardian or conservator[.]”<sup>6</sup> Additionally, Judge Oberbillig found that: “Bradford Lund is able to effectively manage his medical care, estate, and other affairs. Bradford Lund has consistently demonstrated that he makes mature and appropriate financial decisions. He properly relies and has relied upon the advice of his father, Sherry Lund, Rachel Schemitsch, Robert Rosepink, Douglas Wiley, and others as any reasonable person of substantial wealth would do in making important decisions involving his personal affairs, estate, and financial matters.”<sup>7</sup> Ultimately, Judge Oberbillig found: “Although not his burden of proof, Bradford Lund has proven that he deserves the freedom in life to make his own choices.”<sup>8</sup>

As stated by the limited GAL, *appointed by Judge Cowan*, in the Lund Trust Cases, “In neither of those trials [2013 in California and 2016 in Arizona] was there an actual finding of Sherry Lund taking advantage or exercising undue influence.” (*GAL Report*, 8/7/2020, p. 12:4-5, attached as **Exhibit 8**). The limited GAL continued and stated: “Obviously Judge Beckloff found that the Trustees had not breached any of their duties in making the determination that Brad did not qualify for the birthday distribution at the time the determinations were made. However, Judge Beckloff also found that Brad was entitled to select his successor trustees in connection with the 1992 trust and did not find that there was undue influence being practiced upon him in connection with that selection.” (*Id.* at p. 12:19-25). Finally, the limited GAL stated: “Of course, a determination that Brad does not need a conservator is not a determination that he is not susceptible to undue influence, although it does suggest that the Court’s view [was that] he was not the subject of undue influence or being taken advantage of at the time of the ruling. Of note, although the proceedings are sealed, the October, 2009 petition to appoint a conservator alleged undue influence by William S. Lund (Brad’s father) and by Sherry Lund and her family based upon many of the same allegations raised by the Trustees. For the Court in Arizona to have made it’s finding that Brad did not need a conservator, it necessarily would have had to deal with those allegations.” (*Id.* at p. 13:8-13).

Just as in *In re Marriage of Tharp, supra*, 188 Cal. App. 4th at p. 1320, Judge Cowan ignores the Arizona Judgment, Judge Beckloff’s finding that Mr. Lund had capacity

---

<sup>5</sup> **Exh. 7**, p. 3-4 ¶¶ 1-3, 6.

<sup>6</sup> **Exh. 7** at p. 4 ¶ 7.

<sup>7</sup> **Exh. 7** at p. 5 ¶ 12.

<sup>8</sup> **Exh. 7** at p. 6 ¶ 22.

to exercise Trustee Removal Powers and to direct his counsel in litigation, together with the fact that Mr. Lund proceeded to trial and testified without a GAL in both Arizona and California trials in 2016 and 2013 respectively.

Judge Cowan made the following improper statement concerning Ms. Slaton's strategy<sup>9</sup> in representing Mr. Lund:

- “The Court is concerned that this strategy may be unduly depleting Brad’s trust assets without benefit to him under the direction of a potentially conflicted attorney[.]” (**Exh. 1**, p. 2:3-5).

This statement violated Canons 1 and 3 of the Judicial Code of Ethics. As discussed above, willful conduct and conduct prejudicial to the administration of justice are grounds for removing a judge from the bench. *See Furey, Geiler, Cannon, Gonzalez, supra*. Judge Cowan has no authority to make comments regarding litigation strategy. *In re Marriage of Tharp, supra*, 188 Cal.App.1295, 1320. This statement destroys the integrity of the judiciary because it has no basis in fact or the record. Judge Cowan is not permitted to adduce how much Mr. Lund spends on his attorneys’ fees. Furthermore, there is no evidence anywhere that Mr. Lund is using trust funds to pay attorneys’ fees.

Judge Cowan also ignores Mr. Lund’s claims that the Trustees, and their attorneys, are continuing to waste Mr. Lund’s trust assets. Moreover, Judge Cowan completely ignores the fact that the Trustees have conspired against Mr. Lund together with breaching their fiduciary duties, committing fraud, and making material misrepresentations to the court.

The California Supreme Court held that material misstatements warranted removal from office for the judge. *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 914-15. There, the *Adams* court stated: “There are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information ....” Judge Cowan has provided demonstrably false information. Judge Cowan has not established that Ms. Slaton is a “conflicted attorney.” Indeed, as discussed above, Ms. Slaton has always represented and avowed that she had the proper ethically required waivers, and that even though she had them, in any event, there is no conflict of interest. Judge Cowan even admits that Mr. Lund and Sherry

---

<sup>9</sup> It should be noted that a previous complaint to this Commission was lodged by Mr. Lund for *inter alia* Judge Cowan’s personal animus and bias toward Mr. Lund’s attorney, Ms. Slaton. This complaint included *inter alia* Judge Cowan using the sexist, chauvinistic, and misogynistic terms of “emotional” and “coy” in describing Ms. Slaton and her conduct.

Lund are often aligned in the litigation that was before Judge Cowan. (**Exh. 1**, p. 8:6). Moreover, Sherry Lund is not a party in the Lund Trust cases in her individual capacity, but only in her trustee capacity. Therefore, pursuant to her fiduciary duties, Mr. Lund's interests are placed above her own interests at all times.

Judge Cowan made the following improper statement concerning Mr. Lund's interests being adverse to Ms. Lund's interests:

- “Brad’s interests appear to be ‘directly adverse’ to Sherry’s interests insofar as Brad has no way to protect himself as a person with seemingly some level of developmental disability while Sherry can both act for her own interests and act on Brad’s behalf as his attorney-in-fact.” (**Exh. 1**, p. 4:12-15).

Judge Cowan provides no basis for his statement that Mr. Lund's interests are “directly adverse” to the interests of Ms. Lund, except the conclusory statement without any support whatsoever that they “appear” to exist. The integrity of the judiciary cannot be upheld by a judge that turns his personal animus towards Sherry and Mr. Lund by simply claiming that in his opinion there appears to be interests that are “directly adverse”. Instead, what Judge Cowan is doing is attempting to persuade the newly appointed judge to follow in his path of destroying Mr. Lund's rights. Prejudgment of issues without evidence is improper. *In re Martin* (1977) 71 Cal.App.3d 472, 481. That is exactly what has happened here. Mr. Lund is a competent 50-year-old man who has the right to choose his advisors and attorneys. As a competent adult, Mr. Lund deserves the freedom to live his life the way that he wants and to make his own choices.

A judge who displays evident bias against one side of a case, or one who is so personally embroiled as to lose the ability to consider the matter in a neutral and objective manner, violates these canons. *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 858-861 (misconduct included failure to remain objective, improper personal involvement, and distaste for a party that overrode judge's objectivity); *see also Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1311 (judge's in-court statement to defendants that judge would always believe testimony of a police officer found to be prejudicial misconduct); *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 748 (misconduct for judge to express legitimate concern in unacceptable, non-objective and non-neutral manner and to demonstrate unwarranted impatience, disbelief and hostility toward counsel, litigants and witnesses). Judge Cowan's personal bias and prejudice is evident in these statements, and many others, which warrants his removal from the bench.

Judge Cowan made the following improper statement concerning Ms. Slaton's conduct in filing motions and appeals:

- The Court is troubled by Brad's counsel's conduct before this point—which included two legally frivolous motions to disqualify the GAL and multiple unsuccessful attempts to obtain appellate relief, as discussed.” (Exh. 1, p. 4:6).

First, Judge Cowan's use of the words “legally frivolous” are both entirely subjective, without any evidence to support them. Also, Judge Cowan's statement constitutes an improper personal attack on the ethics and good faith of Ms. Slaton, which show personal animus towards an attorney in the context of an OSC aimed at her directly. Such personal attacks and bias are improper and illustrate a level of judicial impropriety and temperament that calls for the removal of Judge Cowan from office.

Second, in *Furey*, the judge was removed from the bench for statements made after the defendant moved to disqualify the judge. *Furey, supra*, 43 Cal.3d at p. 1308. So too, here, Judge Cowan has made similar statements in this publicly filed OSC. Judge Cowan cannot be impartial when he seeks to disqualify Mr. Lund's lead counsel, after she has sought, on behalf of Mr. Lund, to recuse Judge Cowan himself and sued him in federal court. This is improper retaliation. *Furey, supra*, 43 Cal.3d at p. 1308. Indeed, Judge Cowan lacks authority to disqualify Ms. Slaton. *Great Lakes Construction, Inc., supra*, 186 Cal.App.4th p. 1356; *Geiler, supra*, 10 Cal.3d at p. 281.

**B. *Judge Cowan Willfully, Falsely, And Prejudicially Claims That Ms. Slaton Interfered In Several Ways With The Court-Appointed Limited GAL:***

Judge Cowan falsely states:

- “Brad's counsel interfered in several ways with the court-appointed GAL's assignment to determine whether a revised settlement agreement (“RSA”) could be negotiated in Brad's best interests.” (Exh. 1, p. 4:21-23).

Judge Cowan's statement is demonstrably false and illustrates the need for his removal from the bench. *Adams, supra*, 10 Cal.4th at p. 914-15. The limited GAL never stated that Ms. Slaton interfered with her assignment. (*Preliminary Report of Guardian Ad Litem Margaret G. Lodise, Esq.*, 1/21/2020; *Guardian Ad Litem Report*, 8/07/2020, attached as **Exhibits 8 and 10**). Such false statements destroy the integrity of the judiciary.

Furthermore, Judge Cowan's false statement establishes that he is not conducting himself impartially, competently, or diligently.

Judge Cowan made the following improper statement against Mr. Lund's counsel which occurred outside his courtroom, and mischaracterized Ms. Slaton's legitimate actions in her role as advocate as "threats" against a third party:

- "The GAL indicated two of four proposed successor corporate trustees were 'not willing to act' after the initial meetings and 'one [of the four] ultimately withdrew from consideration after Brad's counsel sent a cease and desist email over their ongoing discussions with the current Trustees or the GAL. [...] These threats to mere proposed trustees are not appropriate." (**Exh. 1**, p. 5:13-17).

Judge Cowan's statement violates Canons 1 and 3 as it destroys his impartiality, or the appearance of his impartiality, together with failing to uphold the integrity of the judiciary.

For context, Judge Cowan is referring to a cease and desist letter sent to J.P. Morgan Chase. The cease and desist letter was made because the Trustees, contrary to the settlement agreement (which transferred the power to choose replacement trustees to Mr. Lund through a petition for approval) unilaterally selected this replacement corporate trustee at secret meetings held with those applicant trustees behind Mr. Lund's back and without his knowledge or authorization. (*Reply to Trustees' Response to Guardian Ad Litem Report*, p. 3:10-13, attached as **Exhibit 9**; see also **Exh. 4**, p. 7:23-8:18). Furthermore, the Trustees discussed the 1992 Trust, which they are not trustees on, and the representative from J.P. Morgan Chase was emailing myself attempting to gain Mr. Lund's approval on the nomination by the Trustees. There were no threats of any kind. Rather, Ms. Slaton, on behalf of Mr. Lund, asserted Mr. Lund's rights and preserved any and all remedies that would be available to Mr. Lund.

There is no authority that a Judge has the ability to control how a litigant protects their rights outside of the courtroom. While a judge has the power to control litigation in the context of the court, there is no known authority which states that a person cannot request an entity to cease and desist actions that are violating their rights. To do so would allow the Judge Cowan to violate the integrity of the judicial system and destroy the appearance of impartiality.

Judge Cowan made the following statements which contradicted his claims as to Ms. Slaton's interference with the GAL:



- “Despite initially not communicating with the GAL, Brad raised several objections to the RSA which the GAL found compelling.” (**Exh. 1**, p. 5:18-19).
- “[t]here were “over 20 hours” of ensuing discussions between the GAL and Brad’s counsel” (**Exh. 1**, p. 6:15-16).

The integrity of the judiciary is lost when Judge Cowan makes such contradictory statements. These statements, quoted above, directly contradict Judge Cowan’s claim that Ms. Slaton interfered with the court-appointed GAL in determining whether a revised settlement could be reached. Judge Cowan admitted that the GAL found Mr. Lund’s objections to the RSA “compelling.” Judge Cowan also admitted that Mr. Lund’s lawyers conferred with the GAL for “over 20 hours.” Yet, inexplicably, and without support in the record, Judge Cowan accuses Ms. Slaton of interfering with the GAL.

Judge Cowan made the following improper statement in the OSC against Ms. Slaton regarding Mr. Lund’s federal action naming Judge Cowan as a defendant:

- “Brad additionally filed a federal court action against the undersigned challenging the constitutionality of the Court’s appointment of the limited-purpose GAL. Though this action was dismissed, the negative impact that the action had on the GAL’s ability to carry out her duties unimpeded is apparent. The Court is concerned that the foregoing acts caused the GAL to become unwilling to opine on whether Sherry or Brad’s counsel were conflicted, despite the Court’s directions out of concern she would likely be Slaton and or Sherry’s next target.” (**Exh. 1**, fn. 7).

The limited GAL specifically found in her Report, filed January 21, 2020, that there was no conflict of interest by Sherry Lund (and James Dew) serving as co-trustees on both Mr. Lund’s 1992 Trust and Mr. Lund’s self-settled Nevada Trust. (*Preliminary Report of Guardian Ad Litem, Margaret G. Lodise, Esq.*, 1/21/2020, p. 5:22-6:9, attached as **Exhibit 10**). Judge Cowan, then stated he was dissatisfied with the limited GAL’s finding and discharged the limited GAL. Moreover, Judge Cowan in his willfully biased and prejudiced OSC improperly preserved the possibility that the new judge could reappoint a new GAL.

Judge Cowan has impermissibly made himself an adversary in the Lund trust matters by continuing to bring up the fact that he is a named defendant in Mr. Lund’s federal claim asserting that his civil rights were violated and that Judge Cowan violated the Americans with Disabilities act. *Fletcher, supra*, 19 Cal.4th at p. 911; *Broadman, supra*,

18 Cal.4th at p. 1100, 1103; *In re Martin, supra*, 71 Cal.App.3d at p. 482 (disqualifying judge who became adversary because it violated party's due process rights). Judges should be disqualified when they have become adversarial to a party. *State v. Tucker* (N.J. Super. Ct. App. Div. 1993) 345 N.J. Super. 466, 470 (determining that judge's prior involvement as a prosecutor before the grand jury was required to recuse himself); *Ellis v. Henning* (Fla. Dist. Ct. App. 1996) 678 So.2d 825, 827 (granting a writ of prohibition against a judge because the judge became an adversary to a litigant in the case); *Post v. State* (2015) 298 Ga. 241, 258 (judge was required to recuse himself based on his oral statements appearing to defend himself); *Bean v. Bailey* (Tenn. 2009) 280 S.W.3d 798, 805 (determining that judge should recuse himself for acrimonious relationship with a party's counsel); *Davis v. Nutaro* (Fla. Dist. Ct. App. 1986) 510 So.2d 304, 304 (issuing a writ of prohibition that judge should be recused because judge took an adversarial position against a litigant); *Kielbania v. Jasberg* (Fla. Dist. Ct. App. 1997) 744 So.2d 1027, 1028 (determining a judge should have recused himself in a situation where judge appeared to be acting as adversary against an attorney by arguing about evidence and other issues).

"It is of course a fundamental rule that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent." *In re Adoption of Richardson* (1967) 251 Cal.App.2d 222, 234. In the present case, Judge Cowan is not impartial and independent, but rather has taken a position against Mr. Lund and is now attempting to pass that position on to the next judge through his role on the bench.

Judge Cowan made the following improper statement indicating his inability to remain unbiased in his findings on the issue of purported undue influence of Ms. Lund:

- "However, the Supplemental Report fails to weigh in on fitness of individual trustees at all, and the earlier Report merely indicated there was no previous court finding of undue influence of Sherry (which is accurate) and that 'it [is] unlikely that Brad will decide ... that he should no longer look to Sherry and her family for support.'" (**Exh. 1**, p. 6:6-9).

Judge Cowan's statement fails to avoid impropriety and the appearance of impropriety in making statements that Sherry is unduly influencing Mr. Lund when he directly quotes the limited GAL's finding that "there was no previous court finding of undue influence by Sherry." (**Exh. 1**, p. 6:8). Indeed, Judge Cowan even admits the limited GAL's statement "is accurate" in his OSC. However, he contends that Ms. Slaton should still be removed. Again, Mr. Lund is a competent 50-year-old adult who can make his own decisions. Judge Cowan ignores the Arizona Judgment.

C. ***Judge Cowan Willfully, Falsely And Prejudicially Stated That Dr. Mark Winograd Was A Witness And That He Conducted The Genetic Tests For Down Syndrome On Mr. Lund:***

Judge Cowan made the following false statements regarding Ms. Slaton's husband, Dr. Winograd:

- “Third, the Court recognizes that Ms. Slaton's husband was a material witness on the subject of Brad's cognitive capacity in the Arizona conservatorship action. Ms. Slaton's husband, Dr. Winograd, conducted genetic testing for Down's [sic] syndrome, which testing came back negative.” (Exh. 1, p. 6:22-24)
- “[T]his undermines the credibility of the testing due to the obvious alignment of interests between Ms. Slaton and her husband, Dr. Winograd.” (Exh. 1, p. 7:5-6).

These statements, quoted above, are false, and, therefore, destroy the integrity of the judicial system. Dr. Mark Winograd was never a witness, “material” or otherwise, in the Arizona conservatorship case and there is nothing in the record to suggest that he was. Judge Cowan's false representation establishes his animus for Ms. Slaton, and thereby Mr. Lund. Judge Cowan should be removed from office for his false statements. *Adams, supra*, 10 Cal.4th at p. 914-15.

Further, Judge Cowan has been provided with indisputable genetic testing records which established unequivocally that Mr. Lund does not suffer from Down syndrome. (*Brief in Support of Joinder To Petition To Approve Settlement Agreement*, Exhibit E, attached as **Exhibit 11**). Moreover, no party in the Lund Trust Matters has asserted that Mr. Lund has Down syndrome since the test results were received over a decade ago.

Specifically, in a public hearing, on June 25, 2019, Judge Cowan made a knowingly false statement about Mr. Lund's mental incapacity and refused to withdraw it when shown incontrovertible evidence of its falsity. He said: “Do I want to give \$200 million, effectively, to someone who may suffer on some level from Down syndrome? The answer is no.”<sup>10</sup> Ms. Slaton, immediately responded that her client, Mr. Lund, “has been *proven not to have Down syndrome*.” (emphasis added). Ms. Slaton requested that Judge Cowan retract his demonstrably false statement about her client, Mr. Lund, based upon the irrefutable genetic testing. Nevertheless, Judge Cowan, shockingly, did not ask to see the

---

<sup>10</sup> Transcript of June 25, 2019, hearing in Los Angeles Superior Court, p. 19:10-13, attached as **Exhibit 12**.

results of the genetic test that was available in the public record for this case. Instead, with reckless disregard of the facts, he simply replied, with one word: “Denied.”<sup>11</sup>

A Down syndrome (or Trisomy 21) test is equivalent to a pregnancy test, there is a definite answer. Down syndrome is a genetic disorder where there is all or part of a third copy of chromosome 21. Dr. Mark Winograd merely ordered the test, but an independent lab, Athena Diagnostics in Worcester, Massachusetts, performed the test which came back negative. The test results were signed by medical staff from Athena. (**Exh. 11**, p. 22, fn. 3, Exhibit E.). Judge Cowan’s statement regarding the credibility of this test is further evidence of his bias and prejudice against Mr. Lund and his attorney Ms. Slaton.

Judge Cowan made the following improper statements without any support in the record, as part of his insertion of himself as an adversary in the case:

- “The Court is concerned that Ms. Slaton has an independent interest in vindicating her husband’s opinion of Brad’s condition, which has been a key issue in litigation here and in Arizona, and that this part of the reason Ms. Slaton has persistently argued the Court has engaged in discrimination against Brad.” (**Exh. 1**, p. 7:11-14).
- “Ms. Slaton’s positions may be influenced by the fact that her husband offered the medical positions she continues to take even if Ms. Slaton is not a ‘necessary’ witness.” (**Exh. 1**, p. 7:23-25).

These statements, quoted above, again represent Judge Cowan’s judicial misconduct by introducing his own illegitimate “concern” into this matter. *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 748 (misconduct for judge to express legitimate concern in unacceptable, non-objective, and non-neutral manner and to demonstrate unwarranted impatience, disbelief and hostility toward counsel, litigants, and witnesses). Furthermore, as stated above, Dr. Winograd did not provide the evidence regarding Mr. Lund’s condition, that evidence was provided by the indisputable independent testing done by Athena Diagnostics.

As stated above, Judge Cowan has destroyed the integrity of the judiciary by prejudging the case and determining incorrectly that Mr. Lund suffers on some level from Down syndrome – then refusing, on request of Ms. Slaton, to withdraw his false assertion even after being reminded of the genetic test establishing that Mr. Lund did not, and could not, such a condition. Prejudgments are specific grounds for disqualification. *Pacific etc. Conference of United Methodist Church v. Superior Court* (1978) 82 Cal.App.3d 72; see also *Higgins v. Higgins*, 275 So. 3d 204 (Fla. Dist. Ct. App. 2019) (disqualifying judge for

---

<sup>11</sup> **Exh. 12**, p. 21: 4.

improper statements about father that destroyed the appearance of impartiality); *Berg v. Berg*, 166 A.D.3d 763, 765 (N.Y. App. Div. 2018) (disqualification of judge was warranted where judge took adversarial position against father and made improper remarks about father); *Partin v. Magalhaes*, 164 So. 3d 88, 89–90 (Fla. Dist. Ct. App. 2015) (disqualification of a trial judge making predetermination and cutting remarks about the petitioner and their case was warranted); *Great Am. Ins. Co. of New York v. 2000 Island Blvd. Condo. Ass'n, Inc.*, 153 So. 3d 384, 390 (Fla. Dist. Ct. App. 2014) (predetermination of issues without any evidence, witnesses or depositions ever being completed warranted disqualification); *French v. State*, 754 N.E.2d 9, 16–17 (Ind. Ct. App. 2001) (trial judge disqualified for sentencing hearing for improper statements made after trial about the case and evidence presented by prosecutor); *Tripp v. Borchard*, 29 P.3d 345, 347 (Colo. App. 2001) (trial judge expressing opinions about plaintiff's case and the value of such case together with expressing opinions and bias regarding damages warranted disqualification of the judge).

Judge Cowan's following statement is indicative of his bias against Ms. Slaton:

- “The Court also notes briefly, that beyond the foregoing issues, Ms. Slaton has also failed to pay the annual pro hac vice fee.” (**Exh. 1**, p. 7:25-26).

Judge Cowan has violated Canons 2 and 3 with this statement. First, there has never been any objection to Ms. Slaton's appearance pro hac vice by any party. Judge Cowan admits “counsel was permitted to continue to participate without objection” in her pro hac vice capacity. (**Exh. 1**, p. 7:26-27). Judge Cowan has taken it upon himself to raise the objection, thereby becoming an adversary in the case. *Fletcher, supra*, 19 Cal.4th at p. 9; *In re Martin, supra* 71 Cal.App.3d at 482. Furthermore, at the very least, the appearance of impropriety is illustrated because, just as in *Furey*, Judge Cowan is making unrequested recommendations to the new court concerning Ms. Slaton's conduct in his own courtroom.

**D. *The Fourth Reason For The OSC Was That Counsel for Mr. Lund and the Co-Trustees of the 1992 Trust Have Consistently Aligned:***

Judge Cowan makes the following improper statement regarding Ms. Lund's purported influence over Mr. Lund:

- “Fourth, Sherry's counsel and Brad's counsel have consistently aligned in this litigation—which further indicates Sherry's influence with or without exercise of her litigation power of attorney over Brad.” (**Exh. 1**, p. 8:11-13).

Judge Cowan's statement regarding the consistent alignment does not match his claim that Mr. Lund's interests appear to be, in some instances, "directly adverse" to Sherry Lund's interests. However, this statement also violates the integrity of the judiciary and establishes that Judge Cowan cannot perform his job impartially, competently, and diligently. Sherry Lund is a Co-Trustee of the 1992 Trust and as such must place the interests of the beneficiary and the trust ahead of her own interests. As stated earlier, Sherry is only involved in one of the Lund Trust matters (the 1992 Trust case) as a Co-Trustee, not as an individual. Sherry is not involved at all in any of the other four matters. Again, this is Judge Cowan establishing his animus and bias for not only Mr. Lund, but Mr. Lund's attorney (Ms. Slaton), and Mr. Lund's stepmother Sherry Lund.

Pursuant to § 170.1, a judge cannot form a personal bias against a party (Mr. Lund), an attorney (Ms. Slaton), or a witness (Sherry Lund). Indeed, in *In re Henry C.* (1984) 161 Cal.App.3d 646, 653, the California appellate court determined it was improper for a judge to have "preconceived notions" about a third-party witness. In so reasoning, the *In re Henry C.* court disqualified the judge. Here, Judge Cowan's animus and bias towards Sherry Lund, a third-party, should also establish his willful misconduct and conduct prejudicial to the administration of justice. Not only has Judge Cowan asserted his personal bias and prejudice against Mr. Lund and his attorney, but also a third-party witness. This personal bias has destroyed any semblance of Judge Cowan's impartiality.

Judge Cowan made the following improper statement regarding his personally created view of purported conflicts between Mr. Lund and Sherry Lund as affecting Ms. Slaton's representation:

- "These conflicts are clearly relevant in determining which positions Slaton can and should ethically take." (**Exh. 1**, p. 8:16-17).

Judge Cowan's statement destroys impartiality because he is attempting to assert what positions an attorney can take for their client. As discussed above, Mr. Lund has the right to choose his own retained counsel, *Powell, supra*, and judges do not have the authority to interfere in attorney-client relations. *Furey, Geiler, and Gonzalez, supra*. Yet again, Judge Cowan is establishing his bias and prejudice by continuing to insult and humiliate Mr. Lund on the record when Judge Cowan is, and was, fully aware that Mr. Lund is competent and has been found to be so by both the California and Arizona courts.

However, Judge Cowan takes it upon himself to attempt to not only direct the litigation, but also direct how a party strategically engages in that litigation. This is clearly willful misconduct or conduct prejudicial to the administration of justice. *Broadman,*

*supra*, 18 Cal.4th at p. 1100, 1103 (“judges ... cannot be advocates for interests of any parties, they must be, and be perceived to be, neutral arbiters of both fact and law.”)

E. ***The Fifth Reason For The OSC Is That Ms. Slaton’s Strategy Is In Conflict With Brad’s Best Interests:***

Judge Cowan made the following improper statements indicating his retaliation against both Mr. Lund and Ms. Slaton:

- ‘Ms. Slaton has consistently and unsuccessfully sought to relitigate issues decided by this Court, reiterated arguments already rejected, and interfered with the Court's attempts to obtain a clearer view of Brad's interests in being able to approve a settlement of these long-standing cases.’ (Exh. 1, p. 8:22-25).
- “Counsel sought to disqualify the undersigned based on an untimely challenge under CCP secs. 170.6 and twice under CCP sec. 170.1.” (Exh. 1, p. 8:26-9:1).
- “Slaton also filed a petition for writ relief after the first disqualification challenge of the undersigned was denied, as well as seeking relief therefrom before the California Supreme Court; all of which was unsuccessful.” (Exh. 1, p. 9:1-3).
- “Counsel’s further writ petition and appeal relating to the Further Rulings was similarly unsuccessful—the Supreme Court again denied review.” (Exh. 1, p. 9:3-4).
- “Counsel even attempted to change courtrooms by way of a request to the Supervising Judge of Civil – which was denied – and then filed a complaint against the undersigned with the Presiding Judge of the Los Angeles Superior Court.” (Exh. 1, p. 9:4-6).
- “Further, counsel filed an action in federal district court against the undersigned—which was unsuccessful and dismissed at the pleading stage. Without hesitation, Counsel filed an appeal to the Ninth Circuit within a day after the federal action was dismissed.” (Exh. 1, p. 9:6-9).

All of these statements quoted above, illustrate Judge Cowan’s retaliatory actions against Mr. Lund and Ms. Slaton for filing statements of recusal against him, appeals from those denials, the federal court action, and even the presently pending Ninth Circuit appeal. Indeed, it appears that Judge Cowan is even striking out at Ms. Slaton for waiting only “a day” to file an appeal with the Ninth Circuit. These statements illustrate Judge Cowan’s personal insertion of himself into Mr. Lund’s probate case and his inability to remain impartial. Judge Cowan is basing part of his OSC to have Ms. Slaton disqualified on her valid writs, appeals, and § 1983 federal proceedings against himself. The appearance of impropriety is inescapable. Judge Cowan’s allegations lack legitimacy in all respects.

It must be noted that a judge has no authority to interfere with the strategy and advocacy by an attorney for a client. In *DeGeorge v. Superior Court* (1974) 40 Cal.App.3d 305, 312, the appellate court stated: “To avoid undue interference with an attorney’s obligation vigorously to represent the interests of his client, counsel should not be held in contempt for disrespectful conduct unless the disrespect is objectively clear and not dependent upon the subjective impression of the judge.” In the present case, while not a contempt issue, Judge Cowan has improperly used his subjective impression in an attempt to sanction Ms. Slaton by an OSC order requesting the withdrawal of her *pro hac vice* status as Mr. Lund’s counsel. Judge Cowan’s personal impression of Ms. Slaton’s strategy show his willful and prejudicial misconduct. Furthermore, these statements illustrate Judge Cowan’s violation of Canons 2 and 3.

Judge Cowan has also impermissibly inserted himself as an adversary in a case where he was supposed to remain the neutral and detached fact-finder. *Fletcher, supra*, 19 Cal.4th at p. 911; *Broadman, supra*, 18 Cal.4th at p. 1100, 1103 (“judges ... cannot be advocates for interests of any parties, they must be, and be perceived to be, neutral arbiters of both fact and law”); *In re Martin, supra*, 71 Cal.App.3d at p. 482. Indeed, Judge Cowan makes statements regarding himself personally as the undersigned. Judge Cowan goes further and discusses the fact that he was a named defendant in the federal district court proceeding. *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 88-61 (misconduct included inability to remain objective, improper personal involvement, and distaste for a party that overrode judge’s objectivity); *Furey, supra*, 43 Cal.3d at p. 1311; *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 748 (misconduct for judge to express legitimate concern in unacceptable, non-objective and non-neutral manner). As discussed above, without justification, Judge Cowan comments on how quickly Ms. Slaton filed a notice of appeal to the Ninth Circuit.

Furthermore, Judge Cowan again brings the litigation against himself, as the Defendant, of the federal civil rights claim (a collateral case regarding Judge Cowan’s alleged violations of the constitution and discrimination against Mr. Lund for perceived mental impairments) into this case. It appears to the objective observer that Judge Cowan has become personally involved in the Lund Trust Matters when he continues to bring up collateral litigation in his OSC against Ms. Slaton for her disqualification from the case. The California Supreme Court determined it was proper to remove a judge when that judge failed to remain objective and became personally involved in the matters before him. *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 859-62; *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1311; *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 748. To an objective



observer, Judge Cowan's OSC can only be seen as improper retaliation against Mr. Lund and his attorney for such an action. For example, Judge Cowan made the following improper statement:

- “Ms. Slaton took measures to intimidate a proposed successor corporate trustee into withdrawing by sending a cease-and desist letter threatening legal action if the trustee continued to talk to the properly-appointed GAL.” (**Exh. 1**, p. 9:12-15).

Again, Judge Cowan is impermissibly attempting to invade into Mr. Lund's affairs outside of the courtroom, and outside of the cases over which he is assigned. There is no authority that a judge can limit how a person directs their lawyer to act regarding the protection and preservation of rights outside of litigation. Integrity and impartiality are destroyed when a judge interferes with a litigant's attorney-client relationship.

Judge Cowan made the following improper statement on his own opinion of Ms. Slaton's strategy:

- “All of the foregoing is demonstrative of a scorched earth litigation strategy that has achieved little yet cost Brad most likely very considerable sums.” (**Exh. 1**, p. 9:17-18).

Mr. Lund has continuously and repeatedly requested a trial date be set on these cases. However, Judge Cowan, until recently, had ignored that request. Moreover, Judge Cowan, while he finally has stopped ignoring the request for a trial setting conference, has inappropriately placed a stay on all of the Lund Trust cases until his willfully improper and prejudicial OSC can be heard.

Judge Cowan again destroys impartiality and integrity with written comments of this nature. These comments merely display Judge Cowan's personal bias and prejudice against Mr. Lund, his attorney, and all of those aligned with Mr. Lund. A judge who displays evident bias against one side of a case, or one who is so personally embroiled as to lose the ability to consider the matter in an neutral and objective manner violates Canons 2 and 3. *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 858-861; *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1311; *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 748.

The above statement is also false and warrants removing Judge Cowan from office. *Adams, supra*, 10 Cal.4th at p. 914-15. Since Judge Cowan issued his Further Rulings on September 27, 2019, Mr. Lund has, in fact, attempted to assert his right to a day in court

because the settlement agreement was null and void. Indeed, all of Mr. Lund's requested relief was, in the end, accomplished: (1) Finally, Judge Cowan is no longer the judge on the Lund Trust Matters; (2) Finally, the case was sent back to the Probate Division; (3) Finally, the original settlement agreement was denied; (4) Finally, the revised settlement agreement was denied; and (5) Finally, the limited GAL has been discharged. These dispositions include virtually all of Mr. Lund's requested relief.

Judge Cowan makes the following improper statement interfering with the lawyer/client relationship between Mr. Lund and Ms. Slaton:

- “Brad is not necessarily guiding this expensive strategy and/or does not necessarily understand the scope of the expenses incurred by taking every legal step feasible in response to the Court's rulings.” (**Exh. 1**, p. 9:21-23).

This statement quoted above, again destroys the appearance of impartiality and integrity in the judiciary. Instead, Judge Cowan is interfering with Mr. Lund's right to choose his counsel, and the ability to litigate in the manner which he thinks will be successful under the law. It is improper for Judge Cowan to discriminate against Mr. Lund because he has the financial ability to pursue a course of action which refuses to allow his constitutional rights to be violated.

Further, Judge Cowan ignores Mr. Lund's claims regarding the fact that the Trustees and their attorneys continue to waste Mr. Lund's trust assets. The Trustees continue to use Mr. Lund's trust assets to justify their breaches of fiduciary duty. The Trustee have used Mr. Lund's trust assets to hire public relations firms and private investigators to humiliate, insult, and slander Mr. Lund and his family in the court and in the media.

Judge Cowan's following statement interferes with the lawyer/client relationship between Mr. Lund and Ms. Slaton:

- “By contrast, the Court has little doubt that counsel understands the scope of the fees incurred by this unsuccessful strategy—which fees clearly benefit her. In turn Brad—as a principal trust beneficiary with Michelle—is effectively paying twice for this strategy to the extent Co-Trustees are forced to defend themselves in actions against them using trust assets.” (**Exh. 1**, p. 9:23-10:5).

There is no authority for a judge to be concerned with the attorney-client relationship of a party, let alone the amount charged or how much the client is paying for

representation. Again, this shows animus towards Mr. Lund and Ms. Slaton. This conduct constitutes willful and prejudicial misconduct by Judge Cowan.

Judge Cowan's following statement interferes with the lawyer/client relationship between Mr. Lund and Ms. Slaton:

- “Furthermore, the need for Brad's choice of counsel remaining on the case is mitigated by Brad's retention of unconflicted counsel from Akin Gump Strauss Hauer & Feld LLP.” (**Exh. 1**, p. 10:6-7).

Judge Cowan's attempts to vitiate his action because Mr. Lund has other counsel is further evidence of willful conduct prejudicial to the administration of justice. Moreover, this statement violates Canons 1, 2, and 3. Judge Cowan's attempt to make a choice for Mr. Lund on who his lawyer should be shows that this judge is improperly interfering with Mr. Lund's chosen counsel. In *Geiler*, the court determined that one of the reasons the judge should be removed from the bench was that the judge “arbitrarily and capriciously relieved the public defender and appointed private counsel” without any request by the defendant or the attorney. *Geiler, supra*, 10 Ca.3d at p. 279. Here, Judge Cowan has taken it upon himself to consider that since Mr. Lund has another attorney appearing on this case, that Ms. Slaton can be removed. However, just as in *Geiler*, Judge Cowan is violating CCP § 284, and using his own determination to replace an attorney against whom he has a personal animus. *See also Kloepfer v. Commission on Judicial Performance, supra*, 49 Cal.3d at 844-845; *Roberts v. Commission on Judicial Performance, supra*, 33 Cal.3d at 748; *McCartney v. Commission, supra*, 12 Cal.3d at 533.

Judge Cowan made the following improper statement regarding Ms. Slaton's lack of cooperation with the limited GAL and attempts for settlement(:

- “The GAL was unable to negotiate a revised settlement, to some degree due to counsel's lack of cooperation with the GAL.” (**Exh. 1**, p. 11:1-3).

Judge Cowan's statement is false which justifies his removal from office. *Adams, supra*, 10 Cal.4th at p. 914-15. The above quoted statement is directly contrary to the record. However, more disturbing, is that Judge Cowan has issued an OSC for the disqualification of Ms. Slaton because he may have thought that she was not cooperating in negotiating a revised settlement. It is improper for a judge to seek to disqualify a lawyer because that lawyer is not cooperating with attempting to settle the matter. In this case, Mr. Lund had adamantly insisted upon his day in court and even asked for a trial setting to take place. (*Motion to Set Trial Setting Conference, Exhibit 14*). That is Mr. Lund's choice,

and neither he nor his lawyer should be punished because they chose not to engage in settlement negotiations. This is once again Judge Cowan's improper insertion of himself into areas where he has no right to participate, such as the confidential lawyer/client relationship and related strategy decisions. *Kloepfer, supra*, 49 Cal.3d at p. 858-861. In any event, as stated earlier, the GAL never asserted that Ms. Slaton interfered with her ability to negotiate a revised settlement agreement. (*Guardian ad Litem Report*, 8/7/2020; *Supplemental Guardian ad Litem Report*, 9/9/2020). Prejudgment without evidence establishes an improper bias and prejudice. *In re Martin, supra*, 71 Cal.App.3d at p. 481.

**F. *Judge Cowan Improperly Seeks to Revoke Ms. Slaton's Pro Hac Vice On The Pretext Of Non-Payment Of Annual Fees And False Allegations of Her Unprofessional Conduct:***

Judge Cowan made the following improper and biased statements against Ms. Slaton's conduct in the courtroom:

- "The Court also notes briefly that, beyond the foregoing issues, Ms. Slaton has apparently also failed to pay the annual pro hac vice fee." (**Exh. 1**, p. 7:25-26).
- "While counsel was permitted to continue to participate without objection, the Court has increasingly determined this was error due to the needless disruptions which ensued from Ms. Slaton's conduct." (**Exh. 1**, p. 7:26-8:1).
- "In addition, the Court has also already had to address Ms. Slaton's courtroom conduct in Brad's motion that she be able to appear remotely (that was filed pre-pandemic)." (**Exh. 1**, p. 8:6-8).

Judge Cowan's statements violate Canon 2 and 3. Judge Cowan's animus towards Mr. Lund's attorney is plain on its face. Pursuant to CCP § 170.1(a)(6)(B) ("Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification."). Furthermore, the above quoted statement by Judge Cowan removes the impartiality and competence required by a judge. Judge Cowan has never sanctioned or disciplined Ms. Slaton in this case in real time during any hearing in which she has appeared before him. The transcripts will affirm that at all times Ms. Slaton has been respectful and professional in front of Judge Cowan. Judge Cowan's prejudice toward Ms. Slaton is so pervasive as to constitute willful conduct that is prejudicial to the administration of justice. *Roberts, supra*, 33 Cal.3d at p. 748.

Judge Cowan has made the following statement against Ms. Slaton's role in the case:

- “[T]he continued participation of Ms. Slaton will likely have a detrimental effect on the significant amount of complex matters still to be decided now that the Court has been unable to approve the above-referenced petitions.” (**Exh. 1**, p. 10:21-23).

Judge Cowan’s statement shows his lack of impartiality and failure to uphold the integrity of the judiciary. Just as in *Furey*, where the judge was removed for sending an unbidden note to the judge in a different court after he was challenged on a CCP 170.6 motion, similarly, in the present matter, Judge Cowan should also be removed for this same type of conduct. *Furey, supra*, 43 Cal.3d at p. 1308. Judge Cowan is interjecting his own view of an attorney on a new judge and stating that she “will likely have a detrimental effect on” the litigation. There is no evidence at all that Ms. Slaton has had a detrimental effect on any litigation. *In re Martin* (1977) 71 Cal. App. 3d 472 (determining a judge should be disqualified for bias and prejudice for predetermination of an issue without any evidence).

On the basis of the foregoing, the cited legal authority, and the entire record in this case, it is requested that Judge David Cowan be removed from office.

Sincerely,

**HORNE SLATON, PLLC**

Sandra Slaton, Esq

Matthew J. Monaco Esq.

**DAVIS GOLDBERG & GALPER, PLLC**

Lanny Davis, Esq.

**THE PITET FIRM, P.C.**

Joseph P. Busch III, Esq.

cc: Bradford D. Lund