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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

1 RICHARD I. FINE  
2 Prisoner ID # 1824367  
3 c/o Men's Central Jail  
4 441 Bauchet Street  
5 Los Angeles, CA 90012

6 **UNITED STATES DISTRICT COURT**  
7  
8 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

8 RICHARD I. FINE,  
9 Petitioner,

Case No. CV09-1914 JFW (CW)

10 vs.

11 **OBJECTIONS, INCLUDING**  
12 **MEMORANDUM IN SUPPORT OF**  
13 **OBJECTIONS, TO MAGISTRATE**  
14 **JUDGE'S REPORT; DEMAND FOR**  
15 **IMMEDIATE RELEASE**

12 SHERIFF OF LOS ANGELES COUNTY,  
13 Respondent.

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1 **I. Prefatory Statement**

2 *A. Nature of the Case*

3  
4 This is a simple case which arose from and centers upon Los Angeles  
5 Superior Court Judge David P. Yaffe's receipt of illegal payments of  
6 approximately \$46,300 per year from LA County, in addition to his state salary  
7 of approximately \$179,000 per year. In essence, Judge Yaffe receives 28% of  
8 his total salary as an illegal payment. All other Los Angeles Superior Court  
9 judges also receive the same 28% illegal payment.  
10  
11

12 In this case, the Petition for Writ of Habeas Corpus (hereinafter the  
13 "Petition") was not opposed by the Respondent, the Sheriff of Los Angeles  
14 ("LA") County. The grounds of the Petition, the claims of the Petition and the  
15 facts asserted in the Petition were not opposed or disputed by the LA Superior  
16 Court or Judge Yaffe. For these reasons alone, the Petition must be granted.  
17 Since there is no opposition, and the LA Superior Court and Judge Yaffe have  
18 reversed their positions, there is no reason for either the Magistrate Judge or this  
19 Court to deny the Writ. At this point in time, the only person who is supporting  
20 the illegal and unconstitutional conduct of Judge Yaffe, the LA Superior Court  
21 and LA County is the Magistrate Judge. As shown herein, the California State  
22 Court has held the LA County payments to be unconstitutional. The California  
23 State Legislature has declared such to be immune from criminal prosecution,  
24  
25  
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1 thereby making such acts criminal. A recent U.S. Supreme Court decision has  
2 re-affirmed that such acts deny due process.  
3

4 Neither Judge Yaffe nor other LA Superior Court judges disclosed such  
5 LA County payments on their Form 700 financial disclosure statements, nor to  
6 parties before them in cases where LA County was the opposing party. Judge  
7 Yaffe and other LA Superior Court judges have then decided cases or made  
8 orders in favor of LA County. Annual litigation reports from the LA County  
9 Counsel to the LA Board of Supervisors for the fiscal years 2005-6 and 2006-7  
10 show that, during such years, LA County judges did not decide a single case  
11 against LA County. (See such documents as part of pleadings submitted to the  
12 Court as part of the contempt case.)  
13  
14  
15  
16

17 In this case, Judge Yaffe has refused to recuse himself in a contempt  
18 proceeding in order to enforce the illegal and void 1/8/08 Order against  
19 Petitioner he made in favor of LA County and its co-applicant, Del Rey Shores  
20 Joint Venture and Del Rey Shores Joint Venture North ("Del Rey Shores") for  
21 an Environmental Impact Report (EIR). Such Order was made without  
22 jurisdiction over Petitioner, without notice to Petitioner, and without Petitioner  
23 being present at the hearing.  
24  
25

26 In the contempt proceeding, Petitioner challenged the Order and the void  
27 Judgment ensuing from such Order. Such challenge is specifically allowed in a  
28

1 contempt proceeding when the contempt proceeding is brought to enforce a  
2 judgment or order.  
3

4 Petitioner also defended against the charge of attacking the integrity of the  
5 Court (Judge Yaffe) and attacking the integrity of the LA Superior Court based  
6 on the demonstrated action of taking payments from a party and not declaring  
7 such violated an “implied or intangible right to honest services”. (18 USC §§  
8 1341, 1343, 1346)  
9  
10

11 Petitioner was charged with 16 separate counts of contempt. Petitioner  
12 was found “not guilty” on 14 counts, including the counts of attacking the  
13 integrity of the court (Judge Yaffe) and the LA Superior Court. Petitioner was  
14 found “guilty” on 2 counts, which were refusing to answer questions about his  
15 assets in a judgment debtor hearing, and practicing law and holding himself out  
16 to practice law. (See Transcript of 1/22/09 and Minute Order of 1/22/09.) The  
17 3/4/09 Judgment does not conform to the Transcript or the Minute Order as to  
18 the specific counts upon which Petitioner was found guilty.  
19  
20  
21

22 This is a clear case of a denial of due process. The facts and claims in the  
23 Petition are not contested, and the U.S. Supreme Court cases are clear in the  
24 principles set forth therein: that there must be “an appearance of justice,” and  
25 that a judge who takes money from a party must recuse himself from the case, as  
26 to do otherwise would compromise the integrity of the court.  
27  
28



1 The Court is respectfully reminded that even Justice Scalia, in defending  
2 his duck hunting trip with Vice President Cheney, stated that the party before the  
3 court was not “Dick Cheney”, but the Office of the Vice President. He argued  
4 that separation of the identity of the individual from the office preserves the  
5 integrity of the court.  
6  
7

8 As shown in Petitioner’s brief to the California Supreme Court in his  
9 Petition for Writ of Habeas Corpus, the taking of money by a judge who does  
10 not “throw the case” is still corrupt. Justice Posner of the 7th Circuit stated in  
11 his remarks relating to Sir Francis Bacon that the judge who does not fulfill the  
12 “bargain” after he has taken the money is equally as corrupt as the judge who  
13 takes the money and fulfills the “bargain”. (See Petitioner’s brief to California  
14 Supreme Court, filed with the Petition.)  
15  
16  
17

18 In Judge Yaffe’s case, (as well as the other LA Superior Court judges), he  
19 took the money from LA County and made an order in LA County’s favor. He  
20 then refused to recuse himself and presided over the contempt proceeding to  
21 judge his own wrongful conduct to be lawful. The violation of due process is  
22 clear.  
23  
24

25 Judge Yaffe held Petitioner in contempt. Petitioner has been incarcerated  
26 since March 4, 2009. Petitioner was taken to LA County jail immediately upon  
27 being sentenced and provided with a copy of the Judgment of Contempt.  
28

1 Due to the refusal of the jail to provide Petitioner with paper and pencils or  
2 pro per status (all upon the order of Judge Yaffe), the filing of the Petition for  
3 Writ of Habeas Corpus was delayed for 16 days.  
4

5 ***B. Procedural History***  
6

7 *PETITIONER HAS SPENT 113 DAYS IN SOLITARY CONFINEMENT.*  
8 *THE MAGISTRATE JUDGE HAS FAILED TO FOLLOW THE LAW.* The  
9 Petition was filed on 3/19/09. The Magistrate Judge waited 18 days, until 4/7/09,  
10 to order the Sheriff to answer by 4/21/09 under 28 USC § 2243. The Magistrate  
11 Judge was required to issue the order “forthwith” upon receiving the Petition. On  
12 4/9/09, Petitioner filed an Ex Parte Application for immediate release pending  
13 decision on the Petition with proper notice having been given to the Sheriff.  
14 Under the local rules, the Sheriff was required to respond within 24 hours. On  
15 4/9/09, the Magistrate Judge ordered the Sheriff to respond to the Ex Parte  
16 Application on 4/21/09, thereby delaying the resolution of the issue. On 4/21/09,  
17 the Sheriff responded that he could not answer the Petition nor respond to the Ex  
18 Parte Application. He moved to be dismissed as the Respondent, or in the  
19 alternative, for an order to be entered directing the LA Superior Court, Judge  
20 Yaffe, and Del Rey Shores to answer.  
21  
22  
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26 On 4/23/09, the Magistrate Judge entered the Order directing the  
27 aforementioned entities to answer by 5/1/09 and directing Petitioner to file any  
28

1 opposition to the motion by 5/1/09. Petitioner filed an opposition which the  
2 Magistrate Judge “struck” because it was not signed by Petitioner but was signed  
3 by an authorized person allowed for the Petitioner under 28 USC § 2254 (because  
4 Petition was prevented access to documents to sign himself). On 4/28/09, Del  
5 Rey Shores filed a response that was stricken. They filed a subsequent First Ex  
6 Parte Application to Intervene on 5/8/09 which was not served on Petitioner. An  
7 order to intervene was never signed.  
8

9  
10  
11 On 5/1/09, the Superior Court and Judge Yaffe filed a response to the  
12 Petition and Ex Parte Application. This response only stated that Petitioner was  
13 incarcerated to “coerce” him to answer questions about his assets and that he was  
14 not incarcerated for practicing law and holding himself out to practice law. The  
15 response did not address any count or claim in the Petition or produce any  
16 “pertinent document” from the contempt proceeding as required under the 4/7/09  
17 Order in paragraphs 2 and 3. The response produced four documents, none of  
18 which had exhibit stamps from the contempt proceeding on them. One document  
19 was the 3/4/09 Judgment and Remand Order. The second document was the  
20 3/27/08 Order Striking Notice of Disqualification without any proof of service or  
21 any certification from the LA Superior Court, and without any exhibit stamp  
22 showing it was part of the contempt proceeding. The third was a copy from the  
23 State Bar of California attorney search webpage, which did not have any exhibit  
24  
25  
26  
27  
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1 stamp showing it was part of the contempt proceeding, and the fourth was the  
2 reporter's transcript for the 3/4/09 contempt proceeding.  
3

4 On 5/14/09, Petitioner filed a reply to the LA Superior Court and Judge  
5 Yaffe response showing that the response did not dispute any grounds, facts or  
6 claims in the Petition. (Petitioner's previous reply, filed 5/8/09, had also been  
7 stricken for "lack of signature of party".)  
8

9  
10 Based upon the failure of the Sheriff to answer, under 28 USC § 2243, the  
11 Writ should have been granted on 4/21/09 and Petitioner should have released.  
12 Even assuming the Magistrate Judge had the right to direct the Superior Court  
13 and Judge Yaffe to answer and to extend the time to answer beyond the 20 days  
14 set forth in 28 USC 2243, based upon their failure to answer any count or claim,  
15 the Writ should have granted on 5/1/09, and Petitioner set free.  
16  
17

## 18 **II. Facts In The Petition Are Uncontested**

19  
20 Petitioner was the attorney for Marina Strand Colony II Homeowners  
21 Association in the case of *Marina Strand Colony II Homeowners Association v.*  
22 *the County of Los Angeles*, Los Angeles County Case No. BS109420. On  
23 10/10/07, Petitioner filed various motions in said case, including a motion for  
24 Marina Strand Colony II Homeowners Association to be relieved from dismissal.  
25 Such motion was based upon "excusable neglect." "Mandatory relief" from  
26 dismissal was not available under the Public Resources Code. "Excusable  
27  
28

1 neglect” does not incur attorney fees as a condition for granting the motion, as it  
2 was “permissive” in the discretion of the court. On the other hand, “mandatory  
3 relief,” which was not available under the Public Resource Code, incurs attorney  
4 fees. After filing such motions and before the hearing on such motions,  
5  
6 Petitioner was replaced as counsel for Marina Strand Colony II Homeowners  
7 Association and had no further contact with the case. The reason for Petitioner’s  
8 leaving the case was that on 10/17/07, the State Bar ordered him to be inactive.  
9  
10 On 11/28/07, the California Supreme Court denied Petitioner’s Petition for  
11 Review, but did not uphold the State Bar Court’s order and did not order  
12  
13 Petitioner to be inactive. However, Petitioner did not rejoin the case.  
14

15 On 1/8/08, without notice to Petitioner, without Petitioner present at the  
16 hearing, and without jurisdiction over Petitioner, Judge Yaffe entered an order in  
17 the *Marina Strand Colony II Homeowners Association* case ordering Petitioner to  
18 pay attorney fees and costs to LA County and its co-applicant, Del Rey Shores,  
19 and sanctions to the court. Such order was void in that Judge Yaffe did not have  
20 jurisdiction over Petitioner, and was void and unconstitutional in that it was  
21 without notice or hearing. Such order also ordered attorney fees under the  
22 “mandatory provision” of CCP § 473b, which was precluded under the Public  
23 Resources Code. Petitioner was served with the order by mail on 1/23/08 by  
24  
25 Rose Zoia, subsequent counsel for the Marina Strand Colony II Homeowners  
26  
27  
28

1 Association, who had filed further briefs on the aforementioned motions to be  
2 relieved from dismissal.  
3

4 On 2/19/08, Petitioner, through a “special appearance,” filed three motions  
5 challenging the jurisdiction of the court and the 1/8/08 order. These were a  
6 Motion to Disqualify LA Superior Court judges receiving money from LA  
7 County, a Motion to Dismiss Order for lack of jurisdiction, lack of notice and that  
8 discretionary provision of CCP § 473b does not allow or mandate the imposition  
9 of sanctions, legal fees and costs. (See Trial Exhibits 1A and 9 for motions and  
10 1/8/08 order.) Petitioner subsequently filed a Motion to Tax Costs after Del Rey  
11 Shores filed their costs and attorney fees.  
12  
13  
14

15 At a 3/20/08 hearing of the three motions, Judge Yaffe belatedly attempted  
16 to strike the Motion to Disqualify the LA Superior Court, claiming such to be a  
17 CCP § 170.3 Objection, and continued the other two motions until 4/10/08. Such  
18 attempted striking was illegal as it was beyond the 10-day period allowed under  
19 CCP § 170.4 to strike a CCP § 170.3 Objection. Further, Judge Yaffe claimed in  
20 his 3/27/08 Order Striking Notice of Disqualification that struck such Motion on  
21 3/18/08 by court order is false as no court order dated 3/18/08 exists and none  
22 can be found on the court docket.  
23  
24  
25  
26

27 At the 3/20/08 hearing, Judge Yaffe admitted in open court that he had  
28 received, and was receiving, payments from LA County and that he had not

1 disclosed such on his Form 700 Statement of Economic Interests. Based upon  
2 such admissions, on 3/25/08, Petitioner filed a CCP § 170.3 Objection to Judge  
3 Yaffe and personally served such on that day. Judge Yaffe never responded to  
4 such Objection and was thus disqualified under law pursuant to CCP §  
5 170.3(c)(4) as of 4/6/08. Additionally on 3/25/08, Petitioner filed a Notice of  
6 Disqualification of Judge Yaffe relating to his attempted striking of the 2/19/08  
7 Motion based upon the fact that such striking was untimely if he had considered  
8 such motion to be a CCP § 170.3 Objection. On 3/27/08, Judge Yaffe filed his  
9 Order Striking Notice of Disqualification, referring to the 3/25/08 Notice of  
10 Disqualification filed by Petitioner and not referring to the CCP § 170.3  
11 Objection which was served upon Judge Yaffe and to which he did not respond.  
12 The 3/27/08 Order Striking Notice of Disqualification was not served on  
13 Petitioner. On 4/8/08, Petitioner filed by fax a Notice of Disqualification of  
14 Judge Yaffe, based upon his failure to respond to the CCP § 170.3 Objection. On  
15 4/10/08, at a court hearing, such Notice of Disqualification was personally given  
16 to Judge Yaffe and filed with the Court. The docket shows a filing date of  
17 4/11/08, the day after the hearing. (See Trial Exhibit 21, attached to Petition.)

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21  
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24  
25 Del Rey Shores conceded at the contempt trial, through the testimony of  
26 Joshua L. Rosen, that they were not relying on the 1/08/09 Order as a basis of the  
27 enforcement of the Judgment. (A transcript of this testimony was ordered and  
28

1 paid for, but the reporter never produced such.) However, at page 18, lines 25-  
2 26, of its 4/28/09 response, Del Rey Shores agreed that Petitioner did not have  
3 notice of the 1/8/09 Order and was not present at the hearing. By stating “It is  
4 undisputed that Fine received notice of the January 8 Order by mail on January  
5 23” two weeks after the issuance of the Order, it conceded that the 1/8/09 Order  
6 was without prior notice, it is in “bad faith” for Del Rey Shores to submit an  
7 amount of attorney fees as costs to support the 1/8/09 Order or submit a judgment  
8 reflecting such costs, and it attempted to enforce such through a debtor  
9 examination and a contempt proceeding in bad faith.  
10  
11  
12  
13

14 In contrast, LA County, knowing that the 1/8/09 Order was void, without  
15 jurisdiction and unconstitutional, did not submit an amount of attorney fees and  
16 costs as directed in the Order. Additionally, at Paragraph 9A of the 3/21/09  
17 Judgment, Judge Yaffe only referred to striking the 3/25/08 Notice of  
18 Disqualification and did not contest the fact that he was disqualified by not  
19 responding to the 3/5/08 CCP § 170.3 Objection pursuant to CCP § 170.3(c)(4).  
20  
21

22 Thus, as of 4/10/08, LA County had abandoned the 1/8/08 Order, and  
23 Petitioner and Del Rey Shores agreed that Judge Yaffe entered such without  
24 notice or hearing.  
25

26 By 4/10/08, Judge Yaffe had no jurisdiction to act since the 1/8/08 Order  
27 was void and unconstitutional by the agreement of all the parties in the case. At  
28



1 the 4/10/08 hearing, Petitioner informed Judge Yaffe that he was disqualified and  
2 could not act. Judge Yaffe took the remaining motions off calendar.  
3

4 Subsequently, despite their knowledge that there was no 1/8/09 Order  
5 awarding attorney fees and costs, and that Judge Yaffe could not act on the  
6 motion, Del Rey Shores submitted a proposed judgment, which Judge Yaffe  
7 signed on 4/15/08, despite Petitioner having submitted objections. The 4/15/08  
8 Judgment was not an exhibit in the contempt proceeding. The 4/15/08 Judgment  
9 was void as Judge Yaffe did not have jurisdiction to act because he was  
10 disqualified and the underlying 1/8/08 Order which ordered attorney fees and  
11 costs was void.  
12  
13  
14

15 Despite this knowledge, Del Rey Shores illegally and in “bad faith”  
16 proceeded to enforce the void 4/15/08 judgment through a debtor’s exam  
17 procedure.  
18

19 Petitioner objected to the Judgment and to Commissioner Gross, who did  
20 not show that he was “temporary judge” or a “referee” who had power to enforce  
21 a judgment. Petitioner moved to set aside the Judgment, and it was not  
22 calendared. On 11/3/08, Joshua Rosen filed a Declaration and Judge Yaffe  
23 signed an OSC re contempt for 16 counts, including a criminal count under  
24 California Business & Professions Code § 6126 with a penalty of up to one year  
25 in jail. Judge Yaffe refused to recuse himself, even though a number of counts  
26  
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1 charged Petitioner with attacking his personal integrity and the integrity of the  
2 LA Superior Court. Petitioner challenged his authority to decide the contempt  
3 action since he would be deciding his own void actions of 1/8/08 and subsequent  
4 thereto, and his taking of illegal money from LA County and not disclosing such,  
5 as he was obligated to do.  
6  
7

8 Judge Yaffe was the first witness. He testified that he received payments  
9 from LA County, did not disclose such on his Form 700 financial disclosure  
10 statement and could not remember any case in the last three years that he decided  
11 against LA County. The other witnesses were Joshua L. Rosen and R.J. Comer,  
12 counsel for Del Rey Shores, who were also prosecuting the case on behalf of the  
13 LA Superior Court and a custodian of records for the State Bar.  
14  
15

16 Judge Yaffe refused to allow any witness subpoenaed by Petitioner to  
17 testify other than, Messrs. Rosen and Comer, who were also called by each other.  
18 The charges were not divided into five groups, as alleged in the 2/4/09 Judgment.  
19 Judge Yaffe denied a motion to dismiss, found Petitioner “not guilty” on 14  
20 counts and “guilty” on 2 counts. (See 1/22/09 Transcript and 1/22/09 Minute  
21 Order.)  
22  
23  
24

25 The two counts were (1) refusing to answer questions at the 4/16/08  
26 judgment debtor hearing, and (2) practicing law or holding himself out to practice  
27 law. The criminal charge of practicing law or holding himself out to practice law  
28

1 under B&P Code § 6126 was never dismissed. A jury trial was not held. The  
2 charge does not appear as having been decided, but Petitioner was found “guilty”  
3 of the identical charges under B&P Code § 6127(b) in the same count of the  
4 OSC.  
5

### 6 **III. Judge Yaffe Violated Due Process**

7  
8 The Writ must be granted as Judge Yaffe violated the due process clause by  
9 hearing both the *Marina Strand* case and the resulting contempt proceeding.  
10

11 This Petition challenges the actions of a judge who was criticized for taking  
12 illegal payments from a party, not disclosing such and sitting in judgment of his  
13 own actions. CCP § 170.1(a)(3) states that a judge must be disqualified if he or  
14 she “has a financial interest in the subject matter in a proceeding or any party to  
15 the proceeding.” Canon 2 of the Code of Judicial Ethics states that “a judge shall  
16 avoid impropriety and the appearance of impropriety in all of the judge's  
17 activities.” The question is not whether the judge is actually biased, but “whether  
18 a person aware of the facts might reasonably doubt the judge would be able to act  
19 with integrity, impartiality and competence.” (e.g. See *Hall v. Parker*, 69  
20 Cal.App.4th 836, 941(1999)).  
21  
22  
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25 Here, the judge is David P. Yaffe, LA Superior Court judge. The party is  
26 LA County. Illegal payments are currently approximately \$46,300 per year, or  
27 approximately 28% of his state salary of approximately \$179,000 per year. Such  
28

1 payments commenced in the 1980s and were recently declared unconstitutional,  
2 violating Article VI, § 19, of the California Constitution, in the case of *Sturgeon*  
3 *v. County of Los Angeles*, 167 Cal.App.4th 630 (2008), review denied 12/23/08.

4  
5 The critic is Petitioner, who is the former counsel for Marina Strand Colony  
6 II Homeowners Association and who was the subject of a 1/8/08 Order to pay  
7 attorney fees and costs to LA County and co-applicant Del Rey Shores for an EIR  
8 which was made by Judge Yaffe without notice or hearing to Petitioner four  
9 months after Petitioner left the case. Upon being brought into the case to respond  
10 to such unconstitutional and void Order, Petitioner disqualified Judge Yaffe  
11 pursuant to a 3/25/08 CCP § 170.3 Objection to which Judge Yaffe did not  
12 respond and was therefore disqualified under CCP § 170.3(c)(4). (See Trial  
13 Exhibit 21, attached to Petition.)  
14  
15  
16  
17

18 The cases involved herein are *Marina Strand Colony II Homeowners*  
19 *Association v. County of LA* and the contempt proceeding under the same name  
20 against Petitioner in which Petitioner was charged with 16 counts of contempt.  
21 Among the counts of contempt were: (1) “attacking the integrity of the Court  
22 (Judge Yaffe) and the Judges of the LA County Superior Court for taking the LA  
23 County payments, and (2) not responding to questions to enforce the judgment to  
24 pay attorney fees based upon the 1/8/08 Order by Judge Yaffe to pay such to LA  
25 County and its co-applicant.  
26  
27  
28

1 On 1/22/09, Petitioner was found guilty by Judge Yaffe on two counts.  
2 These were: (1) not answering questions related to the unconstitutional and void  
3 order, and (2) practicing law or holding himself out to practice law. (See 1/22/09  
4 Transcript and 1/22/09 Minute Order, attached to Petition)  
5

6  
7 The U.S. Supreme Court precedents are clear that a judge who receives  
8 money from a party in a case before him must recuse himself. The principle was  
9 reaffirmed in the recent case of *Caperton, et al, v. A.T. Massey Coal Co., et. al,*  
10 566 US -- (2009) decided 6/8/09. This case held that even a large campaign  
11 contribution from a person with a potential case before a court to a campaign  
12 committee supporting election of a judge to the court, as distinct from a direct  
13 contribution to the judge, requires the judge to recuse himself from the party's  
14 case. The Court stated, at page 16 of the opinion in relevant part: "... objective  
15 standards may also require recusal whether or not actual bias exists or can be  
16 showed. Due process 'may sometimes bar trial by judges who have no actual  
17 bias and who would do their very best to weigh the scales of Justice equally  
18 between contending parties'. *Murchison*, 349 U.S. at 136. The failure to consider  
19 objective standards requiring recusal is not consistent with the imperatives of due  
20 process. We find that Blankenship's significant and disproportionate influence -  
21 coupled with the temporal relationship between the election and the pending case  
22 ... offer a possible temptation to the average ... judge to ... lead him not to hold  
23  
24  
25  
26  
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28

1 the balance, nice, clear and true.” *Aetna Life Insurance Co. v. Lavoie*, 475 U.S.  
2 813, at 825 (quoting *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), at 60, in  
3 turn quoting *Tumey v. Ohio*, 273 U.S. 510 (1927) at 532).”

4  
5 Here, the LA County payments were large and made directly to Judge  
6 Yaffe. Under the *Caperton* case, CCP § 170.1(a)(3), and Canon 2 of the  
7 California Code of Judicial Ethics, Judge Yaffe had no choice but to recuse  
8 himself without any action required by the litigant. In this regard, the Court may  
9 take judicial notice of the trial court record in the *Sturgeon* case. The case was  
10 removed from the LA Superior Court judges to the San Francisco Court based  
11 upon the LA County payments to the LA Superior Court judges. The Court’s  
12 attention is also respectfully directed to the self-recusal of Judge Fischer in this  
13 Court in case CV-08-2906, *infra*, one day after Petitioner moved that she be  
14 recused as being a former LA Superior Court judge who received LA County  
15 payments. The Court may also note that Judge Wu recused himself in this case  
16 as being a former LA Superior Court judge and colleague of Judge Yaffe.  
17  
18  
19  
20  
21

22 In her Report at page 18, first paragraph, the Magistrate Judge comments  
23 that there is no basis in law for judges who receive payments from LA County to  
24 recuse themselves in cases where the County is a party. As shown above, this  
25 statement is contradicted by the principles set forth in *Caperton*, *supra*, CCP §  
26 170.1(a)(3), Canon 2 of the Code of Judicial Ethics, *Hall*, *supra*, the actions of  
27  
28

1 LA Superior Court judges in *Sturgeon*, supra, and the actions of Judges Fischer  
2 and Wu in this Court. Additionally, the law is clear from the U.S. Supreme Court  
3 cases that judges cannot judge their own actions. (See *Caperton*, supra, pages 9-  
4 10, citing to *Murchison*, infra.) The court in *Caperton* stated at page 6, citing *In*  
5 *Re Murchison*, 349 U.S. 133, 136 (1955) “[A] fair trial in a fair tribunal is a  
6 basic requirement of due process”, and at page 10, citing *Murchison* at 136, “no  
7 man can be a judge in his own case”.  
8  
9  
10

11 At footnote 10 of her Report, the Magistrate Judge confuses the position of  
12 a county in the levels of government with those of the State and Federal  
13 governments by making such position equal to Federal and State governments as  
14 “sovereigns” responsible for the payment of the respective judicial branches. Her  
15 analogy would only work if there were a county court as a sole court whose  
16 judges were only paid a salary from the county general fund and no other source.  
17  
18

19 Neither the U.S. Constitution nor the California Constitution states that  
20 counties may set the compensation of judges or pay it. The California  
21 Constitution, Article VI, § 19, states that the state legislature shall set the  
22 compensation of judges and that this is a non-delegable duty, as shown in  
23 *Sturgeon*, supra.  
24  
25

26 Under the 1997 Lockyer-Isenberg Trial Court Funding Act, the state has the  
27 sole responsibility for trial court funding. Counties do not have any duty to fund  
28

1 judges' compensation. (See Gov't. Code § 77010, et seq.)

2  
3 Contrary to the Magistrate Judge's Report, counties were not given a credit  
4 for their "local judicial payment" from their Maintenance of Effort (MOE)  
5 payments. Under the original setting of their MOE requirement, counties could  
6 deduct the local judicial benefit payment if it had been mistakenly placed in the  
7 MOE requirement.  
8

9  
10 Counties are ordinary parties in cases, are not part of "sovereign"  
11 government that encompasses the Federal or State Judiciary, and are not exempt  
12 from the due process requirement that requires judges receiving payments from  
13 parties to recuse themselves. This is particularly true since the payments violate  
14 criminal law, as shown by the retroactive immunity from criminal prosecution  
15 given to the judges under Senate Bill SBX2 11.  
16  
17

18 **IV. Magistrate Judge Violated 28 USC § 2243**

19  
20 28 USC § 2243 requires the Court to either issue the Writ or issue an order  
21 to show cause to the Respondent (Sheriff) "forthwith" upon receipt of the  
22 Petition. The Court received the Petition on 3/19/09. The Magistrate Judge  
23 violated the statute by waiting 18 days, until 4/7/09, to issue her Order to the  
24 Sheriff to answer the Petition.  
25

26  
27 The statute requires the Sheriff to "certify[ing] the true cause of detention"  
28 within 3 to 20 days. The Sheriff responded within 14 days, on 4/21/09. He stated



1 that he could not answer the Petition, and moved that he be dismissed or, in the  
2 alternative, that the Court direct the LA Superior Court and Judge Yaffe to  
3 answer and also direct Del Rey Shores to answer. By not answering, the Sheriff  
4 violated the statute and the Magistrate Judge violated the statute by not entering  
5 the Writ on 4/21/09.  
6  
7

8       Instead, on granting the Writ on 4/23/09, the Magistrate Judge directed the  
9 LA Superior Court, Judge Yaffe and Del Rey Shores to answer by 5/1/09. This  
10 act violated the statute's 20-day rule which required an answer no later than  
11 4/27/09. Additionally, none of these entities had intervened to subject themselves  
12 to such Order.  
13  
14

15       The Magistrate Judge could justify her action only against the LA Superior  
16 Court and Judge Yaffe under 28 USC § 2254 on the grounds that Petitioner was  
17 subject to a 5-day sentence that he had not begun to serve for practicing law or  
18 holding himself out to practice law. If the Magistrate Judge does not use 28 USC  
19 § 2254 as a basis to direct the LA Superior Court and Judge Yaffe to answer, then  
20 their response must be stricken as they have not intervened in the case by seeking  
21 leave to do such.  
22  
23  
24

25       Even assuming that 28 USC § 2254 was the ground for directing the LA  
26 Superior Court and Judge Yaffe to answer, their response on 5/1/09 was beyond  
27 the 20-day expiration date of 4/27/09. Further, they did not answer the claims in  
28

1 the petition as required in the 4/07/09 Order and did not produce any “pertinent  
2 documents” as required in paragraphs 2 and 3 of such Order. The only  
3 documents they produced were a transcript of the 3/4/09 hearing and a copy of  
4 the Remand Order. The two other documents produced by them (Exhibits B and  
5 C to the McCormick Declaration) were not part of the trial, and the 3/4/09  
6 Judgment produced by them had already been produced as part of the exhibits  
7 submitted with the Petition.  
8  
9  
10

11 Most important, they did not dispute any ground, claim or fact alleged in  
12 the Petition. Their sole arguments were that Petitioner was being incarcerated to  
13 coerce him to answer questions and that he was not being held for practicing law  
14 or holding himself out to practice law. Their summary of events or history of the  
15 case was not supported by any document which was in evidence in the case. This  
16 was particularly true for Exhibit B to the McCormick Declaration, the 3/27/08  
17 Order striking the 3/25/08 Notice of Disqualification which was not itself a trial  
18 exhibit but was part of Trial Exhibit 21, which showed that Judge Yaffe was  
19 disqualified in the underlying *Marina Strand* case (Exhibit 21 is part of Appendix  
20 of Petition).  
21  
22  
23  
24

25 At the time of the LA Superior Court and Judge Yaffe’s 5-1-09 Response,  
26 the Magistrate Judge was bound to issue the Writ due to the failure of the LA  
27 Superior Court and Judge Yaffe to obey the statute and the Order. Further, under  
28

1 the statute, on the day of the return, the Magistrate Judge had to set a hearing “not  
2 more than 5 days after the return” unless “for good cause additional time is  
3 allowed”, and the Petitioner must be present at the hearing to dispute any facts set  
4 forth in the return or add any material facts. The Magistrate Judge never held a  
5 hearing as no facts set forth in the Petition were disputed. This placed the  
6 Magistrate Judge in the position that she had to accept as truthful all facts set  
7 forth and claimed in the Petition, that she could not use any fact from any other  
8 document if it contradicted any fact in the Petition. This is especially true of  
9 facts alleged in the 3/4/09 Judgment if they contradicted facts set forth in the  
10 Petition, as the LA Superior Court and Judge Yaffe never disputed the facts set  
11 forth in the Petition.  
12  
13  
14  
15

16  
17 As of 5/1/09, the total record before the Magistrate Judge was as follows:

- 18 1. The 11/3/08 Order to Show Cause;
- 19 2. The Declaration of Joshua Rosen (which was not a trial exhibit);
- 20 3. The Trial Transcripts of 12/22/08, 1/22/09 and 3/4/09;
- 21 4. The Minute Orders of 12/22/08 and 1/22/09;
- 22 5. The Judgment and Remand Order of 3/4/09;
- 23 6. Trial Exhibits 1A, 9, 14, and 21; and
- 24 7. Senate Bill SBX2 11.

25 No other document was part of the “record.” Any other document to which  
26 the Magistrate Judge referred in her Report must be disregarded as such  
27 documents were NOT part of the “record” and no one requested the Magistrate  
28 Judge to take judicial notice of any document. Her reference to any document  
outside the aforementioned documents was improper and a denial of due process.

1 An example of such improper conduct is the Magistrate Judge's reference to the  
2 current website of Petitioner, the State Bar's current website, including the  
3 9/19/08 Opinion, the 3/27/08 Order Striking Notice of Disqualification, and any  
4 reference to a trial transcript other than those of 12/22/08, 1/22/09, and 3/4/09.  
5

6  
7 Further, the Magistrate Judge is precluded from citing to the 3/4/09  
8 Judgment as Petitioner has challenged every fact and claim therein on a  
9 paragraph-by-paragraph basis, as shown by the Addendum to Paragraph 8 to the  
10 Petition. Since the Sheriff, the LA Superior Court and Judge Yaffe have not  
11 disputed Petitioner's facts and claims, Petitioner's version of the facts and claims  
12 prevail over those set out in the 3/4/09 Judgment.  
13  
14

15 Although the Magistrate Judge's report states that she did not refer to any  
16 submission by Del Rey Shores, the 5/1/09 Response of LA Superior Court and  
17 Judge Yaffe incorporated by reference a procedural history of the 4/28/09  
18 response of Del Rey Shores which was stricken. Thus the procedural history of  
19 the response of LA Superior Court and Judge Yaffe must also be stricken as it  
20 incorporates the stricken Del Rey Shores procedural history. Additionally, the  
21 Del Rey Shores 5/8/01 First Ex Parte Application to Intervene was never served  
22 on Petitioner and the order allowing intervention was never signed and served.  
23 Thus any statement coming from such document must also be stricken.  
24  
25  
26  
27

28 Pursuant to 28 USC § 2243, due to the failure and refusal of the Sheriff, the

1 LA Superior Court, Judge Yaffe and the Magistrate Judge to obey the statute, and  
2 the failure and refusal of the Sheriff, the LA Superior Court and Judge Yaffe to  
3 dispute any facts and legal arguments set forth in the Petition, the Writ must be  
4 granted.  
5

6  
7 The Court's attention is respectfully directed to various parts of the  
8 Magistrate Judge's Report where she refers to the "record" without citation to  
9 any of the aforementioned documents. These unreferenced citations must be  
10 disregarded, as they are not part of the "record". Further, any reference to any  
11 part of the 3/4/09 Judgment which is disputed by the Petitioner must be  
12 disregarded as the LA Superior Court and Judge Yaffe did not dispute the facts  
13 set forth in the Petition and, in particular, those showing that the facts and  
14 conclusions of the 3/4/09 Judgment were wrong, as set forth in the Addendum to  
15 Paragraph 7 of the Petition. Other specific documents not in the record and not  
16 exhibits to the trial are the 4/15/08 Judgment, the 10/12/07 and 9/19/08 State Bar  
17 Decision, the 2/11/09 Supreme Court denial of review, and Exhibits B and C to  
18 the McCormick Declaration, in addition to those set forth hereinabove.  
19  
20  
21  
22  
23

24 Even worse, when the Magistrate Judge cited to references outside of the  
25 "record," as she did at page 6, footnote 4, of her Report, she cited to the State Bar  
26 website and wrongly claimed that the 9/19/08 State Bar opinion on such website  
27 showed a similar pattern of conduct as the present case in five instances in the  
28

1 State Bar case.

2  
3 Had the Magistrate Judge read the State Bar complaint and the underlying  
4 cases to which she referred, she would have found that Petitioner was charged  
5 with “moral turpitude” for filing three Federal civil rights complaints, two  
6 appeals, two Writs, one motion to amend a complaint and CCP § 170.3  
7 Objections, all of which actions were protected by the First Amendment and  
8 further specifically protected under the right to criticize the courts, as set forth in  
9  
10 *Garrison v. Louisiana*, 379 US 64 (1964). Two of the Federal civil rights cases  
11 (*LACAOEHS v. Lewin and LA County*; *Silva v. Chalfant, et al*) directly  
12 challenged the constitutionality of the LA County payments to LA County judges  
13 under Article VI, § 19, of the California Constitution, and the First and  
14 Fourteenth Amendments to the U.S. Constitution. The third Federal civil rights  
15 case (*Fine v. Mitchell, et al*) related to the other civil rights cases and challenged  
16 the actions of judges and others who had received LA County payments and  
17 those who acted in concert with them. Two other underlying cases were a class  
18 action case which Petitioner settled for \$87.86 million (*DeFlores, et al v. EHG*  
19 *National Health Services, et al*) and a taxpayer class action case in which  
20 Petitioner caused the City of LA to change its sewer service charges and lower  
21 them (*Shinkle, et al v. City of LA*).

22  
23  
24  
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26  
27  
28 As a matter of note, a Petition for Writ of Certiorari was filed with the U.S.

1 Supreme Court in the Disbarment case on 6/11/09, the day before the Magistrate  
2 Judge's Report was issued.  
3

4 Further, the Magistrate Judge's Report, at page 19, footnote 11, mis-states  
5 the State Bar Opinion of 9/19/08 and does not even cite to the page of such  
6 Opinion.  
7

8 **V. Senate Bill SBX2 11 Immunity Convicts LA County Judges**

9  
10 Senate Bill SBX2 11 precludes judges from deciding cases where the  
11 county who gave them money is a party before them, as it confirms criminal guilt  
12 to their actions of having received payments from counties.  
13

14 The Magistrate Judge's Report argues, at page 18, without any legal  
15 support, that Senate Bill SBX2 11 (California Gov't Code §§ 68220-68222)  
16 extends to allowing judges to hear cases of counties who pay them money.  
17 Senate Bill SBX2 11 caused the opposite effect. It gave retroactive immunity  
18 from criminal prosecution (which is greater than Fifth Amendment immunity),  
19 civil liability and disciplinary action to anyone who had paid or received the  
20 benefits and allowed judges who were receiving benefits as of 7/1/08 to continue  
21 receiving such until they leave the bench, and allowed the payments to all judicial  
22 officers to continue if the county chose to do so.  
23  
24  
25

26 The Commission on Judicial Performance is challenging the  
27 constitutionality of Senate Bill SBX2 11 by asking for an Attorney General  
28

1 opinion (AG Opinion Request 09-401). It may be the first law giving such wide  
2 retroactive immunity.  
3

4 Nothing in Senate Bill SBX2 11 mentions an exemption from a judge's  
5 duty to recuse himself of his duty to obey the U.S. Constitution. Under Article 6,  
6 Cl. 2, of the U.S. Constitution, all state court judges must obey the U.S.  
7 Constitution and the laws of the United States. Under Article 6, Cl. 3, all judges  
8 are bound by an oath to support the U.S. Constitution. The Fifth and Fourteenth  
9 Amendments both have due process requirements.  
10  
11

12 Senate Bill SBX2 11 provides retroactive immunity against criminal  
13 prosecution for judges who received county payments. By establishing such  
14 immunity, it confirms the criminality of such payments, as immunity cannot exist  
15 unless a criminal act already exists. The county payments cannot be deemed to  
16 be a new unlawful criminal act with retroactive effect as Article 1, Section 9,  
17 Subsection 3, of the U.S. Constitution prohibits the passage of any ex post facto  
18 law.  
19  
20  
21

22 Contrary to the conclusion of the Magistrate Judge's Report, the effect of  
23 Senate Bill SBX2 11 is that judges who accepted county payments engaged in  
24 criminal acts by doing such. This criminal action would mandate their recusal in  
25 the case where the county was a party, under due process.  
26  
27  
28



1 **VI. The Writ Must Be Granted Based On Judge Yaffe's Disqualification**  
2 **and Actions**

3 The Writ must be granted based upon the undisputed facts that Judge Yaffe  
4 was disqualified, Judge Yaffe did not have jurisdiction over Petitioner when he  
5 made the 1/8/08 Order, Judge Yaffe made the 1/8/08 Order without notice to  
6 Petitioner and without Petitioner being present at the hearing, and the 1/8/08  
7 Order and all sequent actions based on such order by Judge Yaffe were void.  
8  
9

10 At page 19, lines 8-15, the Magistrate Judge's Report cites to Exhibit B to  
11 the McCormick Declaration, which was not an independent exhibit at the  
12 contempt trial, for the proposition that Petitioner did not have standing to  
13 disqualify Judge Yaffe. The Magistrate Judge's Report, at page 19, line 21, then  
14 makes the false and unsupported statement "Petitioner no longer had standing to  
15 seek disqualification".  
16  
17

18 No trial exhibit supports such conclusion. Trial Exhibit 21 attached to the  
19 Petition shows that Judge Yaffe was disqualified after he did not respond to the  
20 3/25/08 CCP § 170.3 Objection pursuant to CCP § 170.3(c)(4). The 3/4/09  
21 Judgment does not dispute this, as shown by Findings of Fact 10 and 10A, which  
22 show that Judge Yaffe took motions off calendar on 4/10/08 after Petitioner  
23 informed him that he was disqualified at the 4/10/08 hearing.  
24  
25

26 Further, the facts set forth in paragraphs 3 through 5 of the Addendum to  
27 Paragraph 8 of the Petition are not contested. These show that Judge Yaffe was  
28

1 served with the Notice of Disqualification with respect to the 3/25/08 CCP §  
2 170.3 Objection on 4/10/08 at the 4/10/08 hearing.  
3

4 Additionally, Paragraph 1 of the Addendum states that the “motion for  
5 relief” referred to in paragraph 3 of the 3/4/09 Judgment was based upon  
6 “excusable neglect,” not “attorney fault” as stated in the 3/4/09 Judgment.  
7

8 Further, Paragraph 2 of the Addendum states that the 3/4/09 Judgment, at  
9 paragraph 3, orders Fine [Petitioner] to pay reasonable compensatory legal fees to  
10 Respondent and Real Parties without notice having been given to Petitioner and  
11 without Petitioner being present at the hearing, which is in violation of the  
12 constitutional requirement of notice and an opportunity be heard.  
13  
14

15 The 3/4/09 Judgment admitted, at paragraph 6, that the “Notice of Ruling”  
16 was served by counsel of record on Fine by mail on January 23, 2008, two weeks  
17 after the 1/8/08 hearing.  
18

19 Neither the Sheriff, the LA Superior Court nor Judge Yaffe have disputed  
20 any grounds, facts or claims set forth in the Petition, including the addenda  
21 exhibits and attached document. Not even the 3/4/09 Judgment, at paragraph 9A,  
22 stated that Petitioner could not file a CCP § 170.3 Objection to him. The Writ  
23 must be granted on all grounds.  
24  
25

## 26 **VII. Magistrate Judge Ignored the Special Criminal Charge**

27

28 The Magistrate Judge’s Report ignored the special criminal charge in the

1 OSC of practicing law or holding out to practice law in violation of B&P Code §  
2 6126, which has a penalty of up to one year in jail, thus denying Petitioner a right  
3 to trial by jury.  
4

5 At page 14, lines 3-7, the Magistrate Judge's Report states that Petitioner  
6 was not charged under B&P Code § 6126. However, a review of the OSC shows  
7 that the count charging Petitioner with practicing law or holding out to practice  
8 law cites violation of two statutes: (1) B&P Code § 6126 and (2) B&P Code §  
9 6127(b)  
10  
11

12 The charge under B&P Code § 6126 was never dismissed and the trial  
13 proceeded without a jury under the same count with B&P Code § 6127(b). There  
14 was no severance of the charges.  
15

16 A motion to dismiss all charges was denied, including B&P Code § 6126.  
17

18 The court denied Petitioner a right to trial by jury and then covered up such  
19 denial by omitting to refer to the charge of the violation of B&P Code § 6126 in  
20 the 3/4/09 Judgment. This action was denial of due process and contrary to  
21 clearly established Federal law.  
22  
23

24 The criminal trial required an independent prosecutor, not the lawyer for a  
25 party who was enforcing a judgment as part of the contempt trial. If it should  
26 have been prosecuted as a separate trial, the B&P Code § 6127(b) violation  
27 would also have been tried before the jury to allow the jury to determine the facts  
28

1 of that violation in order to promote judicial efficiency and avoid double jeopardy  
2 of being convicted twice for the same crime.  
3

4 Under 28 USC § 2254, Petitioner can challenge the actions of the Superior  
5 Court to stay the execution of the sentence and to grant the Writ to stop the  
6 action, which is the count containing both B&P Code §§ 6126 and 6127(b),  
7 which were not severed, and § 6126 alone, which was not dismissed.  
8

9  
10 **VIII. Grounds One And Two - "The Appearance Of Impropriety"**

11 The Writ must be granted based upon Judge Yaffe's violations of due  
12 process and lack of "impropriety and the appearance of impropriety".  
13

14 The Magistrate Judge's Report concludes that the LA County Payments of  
15 approximately \$46,300 per year, in addition to judges' State salary of  
16 approximately \$179,000 per year plus benefits, per judge, to the LA Superior  
17 Court judges (or approximately \$20 million per year and approximately \$300  
18 million over the last 20+ years), and which payments have been held to be  
19 unconstitutional under Article VI, § 19, of the California Constitution, and for  
20 which payments all government entities, officers and employees of government  
21 entities have been given retroactive immunity from criminal prosecution, civil  
22 liability and disciplinary action, does not support "a basis in law for . . . [the]  
23 contention that all judges who have ever received these payments must be  
24 precluded, as necessarily biased, from participating in cases in which the county  
25  
26  
27  
28

1 in question is a party.” (Report, page 18.)

2  
3 The Magistrate Judge’s Report does not cite any case to support her  
4 conclusion. Nor *can* she, as the case law is against her. As shown above, the  
5 recent U.S. Supreme Court case of *Caperton*, *supra*, held that a \$3-million  
6 contribution to a campaign committee of a judge running for election by a  
7 prospective party before the court was a denial of due process. The cases cited  
8 in the majority and minority opinions each showed that a payment to a party,  
9 either by a judge receiving such indirectly as part of a “fine” paid into a city’s  
10 general fund in response to his decision, or as a direct benefit to him in another  
11 case where he is a party, based upon the decision in the case in which he is  
12 sitting, will mandate his recusal as denial of due process.  
13  
14  
15

16  
17 *Caperton*, *supra*, also cited cases holding that a judge can not pass upon his  
18 own actions in criminal contempt cases and that criticized judges can not judge  
19 their critics. (See also *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971).)  
20

21 Here, like the court in *Mayberry*, *supra*, Petitioner was charged with  
22 contempt in the OSC in numerous counts for attacking the integrity of the court  
23 (Judge Yaffe). The Magistrate Judge’s report, at pages 21-22, attempts to dilute  
24 this criticism by arguing that Judge Yaffe did not behave like an antagonist  
25 (page 21, lines 24-25) and was “patient and professional” (page 22, lines 23-24),  
26  
27 despite the absence of any record of the pre-contempt proceedings. Petitioner’s  
28

1 statement of facts was not disputed by the Sheriff, the LA Superior Court nor  
2 Judge Yaffe. Nor did they dispute Petitioner's citation to *Mayberry*, supra, and  
3 *Offutt v. U.S.*, 348 U.S. 11 (1954). Petitioner further established facts and claims  
4 in the state appellate courts. (See Addendum to Paragraph 7.) This failure to  
5 dispute Petitioner's facts and claims in the Petition precludes the Magistrate  
6 Judge from deriving opposing facts and claims, particularly when she cannot cite  
7 to a "record" to support her alleged different "facts".  
8  
9  
10

11 The Writ must be granted on Grounds One and Two as the State Court's  
12 adjudication rejecting them was both contrary to, and an unreasonable  
13 application of, clearly established Federal law.  
14

### 15 **IX. Ground Three - Petitioner Did Not Receive A Trial By Jury**

16 The Writ must be granted because Petitioner did not receive a trial by jury  
17 on the criminal charge of violating B&P Code § 6126.  
18

19 As shown above and in Ground Three of Addendum to Paragraph 7 of the  
20 Petition, Petitioner was charged in the OSC (page 3, paragraph 16) under B&P  
21 Code § 6126, said charge was not dismissed or severed, and Petitioner was tried  
22 by Judge Yaffe instead of a jury as required by the Sixth Amendment. Judge  
23 Yaffe then concealed his actions by omitting to mention B&P Code § 6126 in  
24 the 3/4/09 Judgment. Had he dismissed the B&P Code § 6126 charge, he would  
25 also have had to have dismissed the § 6127(b) charge as both were in the same  
26  
27  
28

1 count, and they were based upon the same alleged facts.

2 It is clear that the Magistrate Judge did not read the OSC, or she would  
3 have known of the criminal charge.  
4

5 Neither the Sheriff, the LA Superior Court nor Judge Yaffe contested the  
6 criminal charge or that the Sixth Amendment right to a jury trial has been  
7 violated.  
8

9 The State Court's adjudication was contrary to, and an unreasonable  
10 application of, clearly established Federal law.  
11

12 **X. Ground Four – Due Process Mandates Granting The Writ**  
13

14 The Writ must be granted because the contempt proceeding was prosecuted  
15 by attorneys whose client would benefit from the underlying Judgment. Due  
16 process mandates that an independent prosecutor prosecute a criminal  
17 prosecution.  
18

19 The Magistrate Judge's Report was wrong in stating that Petitioner is in  
20 custody under a civil contempt conviction. As shown above, a criminal contempt  
21 trial occurred and Judge Yaffe concealed such by not reporting such in the 3/4/09  
22 Judgment.  
23  
24

25 Joshua L. Rosen and R.J. Comer, who are Del Rey Shores' lawyers,  
26 brought the OSC and prosecuted the contempt proceeding. The contempt  
27 proceeding contained charges to benefit Del Rey Shores and the criminal charge.  
28

1 They were also witnesses in the contempt proceeding.

2 As shown in the Petition, this conduct violated due process, as the  
3 prosecutor must be independent.  
4

5 Further, neither the Sheriff, the LA Superior Court, nor Judge Yaffe dispute  
6 the facts, claims or Ground Four asserted in the Petition.  
7

8 The State Court's adjudication was contrary to, and an unreasonable  
9 application of, clearly established Federal law.  
10

11 **XI. Ground Five – Evidence Did Not Support The Decision**

12 The Writ must be granted because the evidence did not support the  
13 decision, as shown to the state appellate courts.  
14

15 The Magistrate Judge's Report, at pages 24-25, demonstrates that the  
16 Magistrate Judge did not read the incorporated references of Petitioner's Brief  
17 and Memorandum to the California Supreme Court cited in the Addendum to  
18 Paragraph 7. Had she done so, she could not have drawn her erroneous  
19 conclusions which do not conform to the record set forth at page 25, lines 4-10.  
20 Further, not only are her conclusions erroneous, but they also omit consideration  
21 of Grounds Six and Seven of the Petition, which were also presented to the  
22 California Supreme Court. All grounds were previously presented to the  
23 California Court of Appeal, as shown by Petitioner's petition thereto, a copy of  
24 which was filed with the Petition herein.  
25  
26  
27  
28



1 The Magistrate Judge's Report is flat-out wrong at page 25, lines 10-13,  
2 where it states that the state court's rejection of Petitioner's claims follows the  
3 above [Magistrate's] conclusions and Petitioner has not shown that any of those  
4 [Magistrate's] conclusions are based on unreasonable factual determination.  
5

6 The state appellate courts summarily denied the petitions without comment.  
7 They did not even know of the Magistrate's conclusions. Further, six of the  
8 seven members of the California Supreme Court refused to recuse themselves.  
9 However, four of them had received unconstitutional payments from counties  
10 while they were Superior Court judges, and received retroactive immunity for  
11 such under Senate Bill SBX2 11, and two were on the Judicial Council of  
12 California, which wrote Senate Bill SBX2 11.  
13

14 Neither the Sheriff, the LA Superior Court nor Judge Yaffe dispute the facts  
15 or claims set out in Ground Five.  
16

17 The State Court's adjudication was contrary to, and an unreasonable  
18 application of, clearly established Federal law. The Writ must be granted on  
19 Ground Five.  
20

21 **XII. Ground Six – Petitioner Was Not Notified of Evidence for the**  
22 **Contempt Hearing or of the Existence of the January 8, 2008 Hearing**  
23

24 The Writ must be granted because Petitioner was denied due process as he  
25 did not receive notice of the evidence to be used in the charge of practicing law  
26 or holding out to practice law. Further, the 1/8/08 Order was entered without  
27  
28

1 jurisdiction over Petitioner, without notice to Petitioner, and without Petitioner's  
2 presence at the hearing, thus the Order is void, and all orders by Judge Yaffe  
3 based on such void Order are also void.  
4

5 The Magistrate Judge's Report did not address Ground Six, which was set  
6 forth at Page 7 of the Addendum to Paragraph 7, and which incorporated the  
7 Brief and Memorandum to the California Supreme Court. This is another  
8 indication that the Magistrate Judge did not fully read the Petition and attached  
9 exhibits and addenda.  
10  
11

12 In particular, Ground Six shows that the Declaration of Joshua L. Rosen did  
13 not inform Petitioner that the trial subpoenas, Petitioner's website, and the  
14 Memorandum of Costs were to be used as evidence for the two charges of  
15 practicing law or holding out to practice law. Under California law, the  
16 Declaration is the "complaint" in the contempt proceeding. The Declaration was  
17 never amended, and Petitioner made objections to the documents at trial.  
18  
19  
20

21 Ground Six also shows that the 1/8/08 Order was entered without  
22 jurisdiction over Petitioner, without notice to Petitioner and without Petitioner  
23 being present at the hearing; that the Order is void; and that all orders by Judge  
24 Yaffe based on such Order are also void. (See *Austin v. Smith*, 312 F.2d 337, 343  
25 (1962); "if the underlying judgment is void, the judgment based upon it is also  
26 void.")  
27  
28

1 Ground Six further shows that independent of his taking illegal money from  
2 LA County, Judge Yaffe did not have any jurisdiction to act against Petitioner,  
3 that all of his acts were void, and that Petitioner did not have any notice of the  
4 evidence to be alleged against him for the charges of practicing law or holding  
5 out to practice law.  
6  
7

8 Neither the Sheriff, the LA Superior Court nor Judge Yaffe dispute the facts  
9 or claims set forth in Ground Six.  
10

11 The State Court's adjudication was contrary to, and an unreasonable  
12 application of, clearly established Federal law. The Writ must be granted on  
13 Ground Six.  
14

### 15 **XIII. Ground Seven – Petitioner Denied Expeditious Hearing**

16

17 The Writ must be granted because the acts shown at the trial occurred from  
18 February through June, 2008, and the OSC was not filed until 11/3/08, denying  
19 Petitioner the right to a reasonably expeditious hearing under the Fourteenth  
20 Amendment.  
21

22 The Magistrate Judge's Report did not address Ground Seven, which was  
23 set forth at page 7 of the Addendum to Paragraph 7. This is another indication  
24 that the Magistrate Judge did not fully read the Petition.  
25

26 According to the OSC and the Rosen Declaration, the allegedly  
27 contumacious conduct occurred from early 2008 until June 2008. References  
28

1 made to events after June 2008 in the Rosen Declaration were not supported by  
2 documents submitted as exhibits at trial.

3  
4 There was an approximately four-month lapse from the date of the last  
5 document submitted as a trial exhibit, 6/16/08, and the date of the OSC, 11/3/08.  
6  
7 The trial commenced 12/22/08, approximately six months later. This was not an  
8 expeditious hearing as required under the Fourteenth Amendment.

9  
10 Neither the Sheriff, the Los Angeles Superior Court nor Judge Yaffe  
11 disputed the facts and claims set forth in Ground 7.

12  
13 The State Court's adjudication was contrary to, and an unreasonable  
14 application of, clearly established Federal law. The Writ must be granted on  
15 Ground Seven.

16  
17 **CONCLUSION**

18 By the time of the 7/6/09 response date to the Magistrate Judge's Report,  
19  
20 Petitioner will have been unlawfully incarcerated for over four months since  
21 March 4, 2009. This unlawful incarceration will cease if this Court follows the  
22 law, immediately grants the Writ upon receipt and review of this Objection and  
23 Memorandum, and frees Petitioner.

24  
25 As shown herein, the Magistrate Judge violated 28 USC § 2243 from the  
26 outset of this proceeding by not issuing the OSC "forthwith". Had she issued  
27 such on 3/20/09, as required, and given the Sheriff fourteen days to answer, as  
28

1 she later did, the Writ would have been granted on 4/3/09. The Sheriff violated  
2 28 USC § 2243 by not certifying the reason for Petitioner's incarceration and not  
3 answering. Instead, the Magistrate Judge waited until 4/7/09 to issue her Order,  
4 did not issue the Writ on 4/21/09 when the Sheriff did not answer, and unlawfully  
5 directed the LA Superior Court, Judge Yaffe, and Del Rey Shores to answer by  
6 5/1/09.  
7

8  
9 None of those entities had sought leave to intervene, nor had any of them  
10 been named as interested parties by the Sheriff on his Statement of Interested  
11 Parties. Further, the date of 5/1/09 exceeded the 20-day limitation under 28 USC  
12 § 2243, under which the last day to answer was 4/27/09.  
13  
14

15 Del Rey Shores responded on 4/28/09. The Magistrate Judge struck their  
16 response. A later First Ex Parte Application to Intervene was not served on  
17 Petitioner, and no order to intervene was entered.  
18

19 The LA Superior Court and Judge Yaffe responded on 5/1/09. They did not  
20 respond or answer to any of the grounds in the Petition; they only stated that  
21 Petitioner was incarcerated to "coerce" him to answer questions and that he was  
22 not incarcerated for practicing law or holding himself out to practice law.  
23  
24

25 Had they disputed any facts or claims in the Petition, the Magistrate Judge  
26 was required to hold a hearing by 5/6/09 with Petitioner present to allow him the  
27 opportunity to deny the claims in the "return" and add additional facts, unless for  
28

1 good cause additional time is allowed for the hearing, as set forth in 28 USC §  
2 2243.  
3

4 Since no facts or claims were disputed, the Writ should have been granted  
5 no later than 5/1/09.  
6

7 Still, the Magistrate Judge did nothing. On 5/8/09, Petitioner replied to the  
8 LA Superior Court and Judge Yaffe filing. The Magistrate Judge “struck”  
9 Petitioner’s reply for lack of an “original signature”. The reply was again filed  
10 on 5/14/09. In the meantime, on 4/9/09, Petitioner had filed an Ex Parte  
11 Application for Immediate Release Pending Decision on the Writ. Proper notice  
12 had been given. The Sheriff never filed a substantive opposition, nor did the LA  
13 Superior Court and Judge Yaffe. Despite this lack of opposition, the Magistrate  
14 Judge never granted the Ex Parte Application.  
15  
16  
17

18 On 5/29/09, with all papers filed and no substantive opposition to the Writ  
19 and no granting of the Writ, Petitioner attempted to filed a second Petition for  
20 Writ of Habeas Corpus against the District Court for violation of due process and  
21 violation of 28 USC § 2243. The District Court refused to file such. Petitioner  
22 then filed it with the 9<sup>th</sup> Circuit, who accepted it as a Writ of Mandate/Prohibition  
23 on June 3, 2009. Subsequent thereto, at 5:00 p.m. on Friday, 6/12/09, the  
24 Magistrate Judge issued her Report. Prior thereto on the same day, Petitioner had  
25 filed a Notice of the Supreme Court’s decision in *Caperton*, supra. Courtesy  
26  
27  
28

1 copies of such Notice had been served a day earlier, on Thursday 6/11/09, on the  
2 Magistrate Judge and this Court. The Magistrate Judge therefore knew of the  
3 *Caperton*, supra, decision and its direct relevance and precedent on the issues  
4 raised in the Petition before she filed her Report. Instead, the Notice was  
5 “entered” in the docket as of 6/16/09 and this latest U.S. Supreme Court  
6 precedent was ignored.  
7  
8

9  
10 *Caperton*, supra, and cases cited therein mandate the granting of the Writ as  
11 a denial of due process based upon Judge Yaffe having taken illegal  
12 “unconstitutional” payments from LA County, in the amount of approximately  
13 \$46,300 per year, which is approximately 28% of his state salary of  
14 approximately \$179,000 per year; that he has not disclosed such payments on his  
15 Form 700 Statement of Economic Interests; that he cannot remember any case in  
16 the last three years that he decided against Los Angeles County; that all LA  
17 Superior Court judges have received such percentage payments from Los  
18 Angeles County since the 1980s; that such payments amount to approximately  
19 \$20 million per year and are approximately \$300 million since their inception in  
20 the 1980s; that according to the Los Angeles County Counsel Annual Litigation  
21 Reports for fiscal years 2005-2006 and 2006-2007, not one person won a case  
22 against LA County when a LA Superior Court judge decided the case; and that  
23 the LA County payments of 28% of the judge’s State salary “offer a possible  
24  
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28

1 temptation to the average judge to ... not hold the balance nice, clear and true”.  
2  
3 (*Caperton*, supra, at page 16.)

4 In addition to omitting any reference to *Caperton*, supra, the Magistrate  
5 Judge’s Report demonstrated on its face that the Magistrate Judge had not even  
6 read the entire Petition, the exhibits, the addenda and the briefs submitted to the  
7 State Court of Appeals and Supreme Court, even though she’d had these  
8 documents since 3/19/09, almost three months.  
9  
10

11 Examples of this failure are the fact that she failed to address Grounds 6 and  
12 7 entirely, failed to address the substance of Ground 5 set forth in the Addendum,  
13 failed to read the State Court petitions, and failed to read the OSC.  
14

15 The Magistrate Judge’s Report then shows that the Magistrate Judge  
16 wandered outside the record to do her own unlawful investigation by citing to  
17 Exhibits B and C of the McCormick Declaration, which were not part of the  
18 contempt case, the current State Bar webpage for Petitioner, a website for  
19 Petitioner that is “still open”, and a 9/19/08 State Bar Court Opinion.  
20  
21

22 The Magistrate Judge’s Report additionally shows her violation of the  
23 record by citing as fact statements from Exhibit B to the McCormick Declaration  
24 (the 3/27/08 Order Striking Notice of Disqualification, which was not even a trial  
25 exhibit or part of the record in the contempt proceeding) and citing as “facts”  
26 statements from the 3/4/09 Judgment which were contested in the Petition and  
27  
28



1 not contested by the Sheriff, the LA Superior Court or Judge Yaffe. In addition  
2 to engaging in those errors, the Magistrate Judge cited “facts” without reference  
3 to page and line number and where no record has been provided by the Sheriff,  
4 the LA Superior Court or Judge Yaffe to support such statement. Effectively, the  
5 Magistrate Judge made up a “record” where none exists. (See page 21, lines 24-  
6 26, and page 22, lines 23-25.)  
7  
8

9  
10 The Magistrate Judge’s Report also shows that the Magistrate Judge did not  
11 fully comprehend the case. For example, at page 19, lines 16 - 19, the Magistrate  
12 Judge’s Report states that Petitioner was in the case for over a year before he  
13 attempted to disqualify Judge Yaffe. The facts, *as shown by the Magistrate*  
14 *Judge’s own Report*, are that the case was filed on 6/14/07. Judge Yaffe did not  
15 disclose his LA County Payments, nor did he recuse himself as he was obligated  
16 to do under CCP Code § 170.1(a)(3) and Canon 2 of the Code of Judicial Ethics.  
17 Further, the *Sturgeon* case was being litigated and had been removed from LA  
18 Superior Court due to the county payments to judges.  
19  
20  
21

22 Judge Yaffe knew that if he was receiving payments he should recuse  
23 himself and transfer the case without a motion. Petitioner left the case in October  
24 2008. Petitioner was in the case for three months. During such time, no rulings  
25 had been made and Judge Yaffe was silent as to the payments.  
26  
27

28 As soon as Petitioner became aware of the void action of Judge Yaffe,

1 Petitioner acted.

2 In addition to the Magistrate Judge not fully reviewing the Petition, having  
3 gone outside the record, having constructed a non-existent record, having not  
4 understood the facts of the case, having cited documents which were not part of  
5 the record, having cited to documents which contained false facts, having ignored  
6 the controlling precedent of *Caperton*, supra, and having violated 28 USC §  
7 2243, the Magistrate Judge did not follow other Supreme Court precedent set  
8 forth in *Caperton*, supra, and Federal law set forth in the Petition.  
9  
10  
11

12 In summary, this is an undisputed Petition. It must be granted and the  
13 Petitioner set free.  
14

15 The Magistrate Judge is acting in the same manner as she did in the related  
16 case of *Fine v. State Bar, et al*, CV 08-2906 JFW (CW), in which she delayed the  
17 decision for about ten months. Petitioner has since moved to set aside the  
18 Judgment entered in that case, which was based upon the Magistrate Judge's  
19 Report. The defendants have not opposed the Motion. As of the present time,  
20 the Judgment still has not been set aside. The Motion showed that California  
21 Supreme Court justices were biased because they had received payments from  
22 counties when they were Superior Court judges and did not recuse themselves  
23 when this issue was before them as a ground to disbar Petitioner.  
24  
25  
26  
27

28 As the Court can now see, the Magistrate Judge has a pattern of delay and

1 has lacked the ability to adhere to the Supreme Court precedents regarding  
2 judicial ethics.

3  
4 From the outset, this has been an unopposed Petition. The Sheriff did not  
5 answer and the LA Superior Court and Judge Yaffe did not dispute or oppose any  
6 of the facts, claims or grounds. It should have been granted months ago.  
7

8 The recent case of *Caperton*, supra, further confirms the righteousness of  
9 Petitioner's position. Judges who receive illegal payments from a party to a case,  
10 who do not disclose such on their required Statement of Financial Interest forms,  
11 who receive retroactive immunity from criminal prosecution, and who have a  
12 history of only deciding cases in favor of that party, must recuse themselves, as  
13 due process has been denied.  
14  
15

16 Based upon the Supreme Court cases, Federal law, and the failure to oppose  
17 the grounds of the Petition, the Writ must be immediately granted and Petitioner  
18 set free.  
19  
20  
21

22 ~~Dated this \_\_\_\_\_ day of June, 2009~~

~~Respectfully submitted,~~

23  
24 BY: \_\_\_\_\_

~~RICHARD I. FINE,~~

~~In Pro Per~~  
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Dated this 25<sup>th</sup> day of JUNE, 2009

Respectfully submitted,

BY:



RICHARD I. FINE,  
In PRO PER

**PROOF OF SERVICE**

STATE OF CALIFORNIA,  
COUNTY OF LOS ANGELES

I am Greg McPhee. My business address is 2450 N. Lake Avenue, PMB 227, Altadena, CA 91001.

On June 25, 2009, I served the foregoing document described as **OBJECTIONS, INCLUDING MEMORANDUM IN SUPPORT OF OBJECTIONS, TO MAGISTRATE JUDGE'S RECOMMENDATION AND REPORT; DEMAND FOR IMMEDIATE RELEASE** on interested parties in this action by depositing a true copy thereof, which was enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail, addressed as follows:

Aaron Mitchell Fontana and  
Paul B. Beach  
LAWRENCE BEACH ALLEN & CHOI, PC  
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Frederick Bennett, Court Counsel  
Los Angeles Superior Court, Rm 546  
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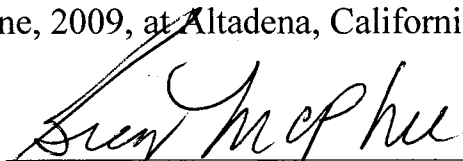
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I certify and declare, under penalty of perjury under the laws of the United States of America and the State of California, that the foregoing is true and correct.

Executed on this 25th day of June, 2009, at Altadena, California.

  
\_\_\_\_\_  
GREG MCPHEE