

RESOLUTION 08-02-2018

DIGEST

Judges: Motion to Disqualify

Amends Code of Civil Procedure section 170.4 to prohibit a judge from striking motions to disqualify that judge which are untimely or disclose no legal grounds for disqualification.

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 170.3, subdivision (c)(5) is essential to ensure the integrity of the judicial process, appearance of judicial impartiality and public trust in the judiciary. It is unreasonable and illogical to allow a judge that is challenged for the appearance of bias to decide if he/she is biased, which is, in essence, what happens when a judge strikes a petition for disqualification under Code of Civil Procedure section 170.4, subdivision (b).

Specifically, Code of Civil Procedure section 170.3, subdivision (c)(5) states in pertinent part: “(5) A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all of the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge’s answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson.”

However, Code of Civil Procedure section 170.4, subdivision (b), see above, on its face, negates Code of Civil Procedure section 170.3, subdivision (c)(5). In other words, Code of Civil Procedure section 170.4, subdivision (b), permits a challenged judge to circumvent Code of Civil Procedure section 170.3, subdivision (c)(5).

The Solution: Accordingly, Code of Civil Procedure section 170.4, subdivision (b), should be deleted.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure 170.4 to read as follows:

- 1 § 170.4
- 2 (a) A disqualified judge, notwithstanding his or her disqualification may do any of the
- 3 following:
- 4 (1) Take any action or issue any order necessary to maintain the jurisdiction of the court
- 5 pending the assignment of a judge not disqualified.
- 6 (2) Request any other judge agreed upon by the parties to sit and act in his or her place.
- 7 (3) Hear and determine purely default matters.
- 8 (4) Issue an order for possession prior to judgment in eminent domain proceedings.
- 9 (5) Set proceedings for trial or hearing.
- 10 (6) Conduct settlement conferences.

11 ~~(b) Notwithstanding paragraph (5) of subdivision (c) of Section 170.3, if a statement of~~
12 ~~disqualification is untimely filed or if on its face it discloses no legal grounds for~~
13 ~~disqualification, the trial judge against whom it was filed may order it stricken.~~

14 ~~(e)~~ (b)

15 (1) If a statement of disqualification is filed after a trial or hearing has commenced by
16 the start of voir dire, by the swearing of the first witness or by the submission of a motion for
17 decision, the judge whose impartiality has been questioned may order the trial or hearing to
18 continue, notwithstanding the filing of the statement of disqualification. The issue of
19 disqualification shall be referred to another judge for decision as provided in subdivision (a) of
20 Section 170.3, and if it is determined that the judge is disqualified, all orders and rulings of the
21 judge found to be disqualified made after the filing of the statement shall be vacated.

22 (2) For the purposes of this subdivision, if (A) a proceeding is filed in a single judge
23 court or has been assigned to a single judge for comprehensive disposition, and (B) the
24 proceeding has been set for trial or hearing 30 or more days in advance before a judge whose
25 name was known at the time, the trial or hearing shall be deemed to have commenced 10 days
26 prior to the date scheduled for trial or hearing as to any grounds for disqualification known
27 before that time.

28 (3) A party may file no more than one statement of disqualification against a judge
29 unless facts suggesting new grounds for disqualification are first learned of or arise after the first
30 statement of disqualification was filed. Repetitive statements of disqualification not alleging
31 facts suggesting new grounds for disqualification shall be stricken by the judge against whom
32 they are filed.

33 ~~(d)~~ (c) Except as provided in this section, a disqualified judge shall have no power to act
34 in any proceeding after his or her disqualification or after the filing of a statement of
35 disqualification until the question of his or her disqualification has been determined.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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