

AMENDED IN ASSEMBLY APRIL 12, 2005

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1322**

**Introduced by Assembly Member Evans**

February 22, 2005

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An act to amend Section 170.1 of the Code of Civil Procedure, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1322, as amended, Evans. Judges: disqualification.

Existing law sets forth the grounds for disqualification of a judge, including, but not limited to, the judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last 2 years has participated in, discussions regarding prospective employment or service and ~~either the arrangement is, or the discussion was, with a party to the proceeding, or the matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral~~ *specified conditions apply*.

This bill would ~~modify~~ *add to* those grounds for disqualification to ~~apply when (1) the arrangement is, or the discussion was, with a party to the proceeding, (2) the matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to an alternative dispute resolution process, or (3) the judge will select or use a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the judge, and among those available for selection is an individual or entity with whom the~~

~~judge has the arrangement or with whom the judge is discussing or has discussed the employment or service~~ *the judge has been engaged in employment or service as a dispute resolution neutral, and would modify the conditions under which these grounds for disqualification apply.* The bill would define “participating in discussions” for purposes of these provisions, *and would provide a statement of legislative intent.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 170.1 of the Code of Civil Procedure is  
 2 amended to read:  
 3 170.1. (a) A judge shall be disqualified if any one or more of  
 4 the following is true:  
 5 (1) (A) The judge has personal knowledge of disputed  
 6 evidentiary facts concerning the proceeding.  
 7 (B) A judge shall be deemed to have personal knowledge  
 8 within the meaning of this paragraph if the judge, or the spouse  
 9 of the judge, or a person within the third degree of relationship to  
 10 either of them, or the spouse of such a person is to the judge’s  
 11 knowledge likely to be a material witness in the proceeding.  
 12 (2) (A) The judge served as a lawyer in the proceeding, or in  
 13 any other proceeding involving the same issues he or she served  
 14 as a lawyer for any party in the present proceeding or gave  
 15 advice to any party in the present proceeding upon any matter  
 16 involved in the action or proceeding.  
 17 (B) A judge shall be deemed to have served as a lawyer in the  
 18 proceeding if within the past two years:  
 19 (i) A party to the proceeding or an officer, director, or trustee  
 20 of a party was a client of the judge when the judge was in the  
 21 private practice of law or a client of a lawyer with whom the  
 22 judge was associated in the private practice of law.  
 23 (ii) A lawyer in the proceeding was associated in the private  
 24 practice of law with the judge.  
 25 (C) A judge who served as a lawyer for or officer of a public  
 26 agency that is a party to the proceeding shall be deemed to have  
 27 served as a lawyer in the proceeding if he or she personally

1 advised or in any way represented the public agency concerning  
2 the factual or legal issues in the proceeding.

3 (3) (A) The judge has a financial interest in the subject matter  
4 in a proceeding or in a party to the proceeding.

5 (B) A judge shall be deemed to have a financial interest within  
6 the meaning of this paragraph if:

7 (i) A spouse or minor child living in the household has a  
8 financial interest.

9 (ii) The judge or the spouse of the judge is a fiduciary who has  
10 a financial interest.

11 (C) A judge has a duty to make reasonable efforts to inform  
12 himself or herself about his or her personal and fiduciary  
13 interests and those of his or her spouse and the personal financial  
14 interests of children living in the household.

15 (4) The judge, or the spouse of the judge, or a person within  
16 the third degree of relationship to either of them, or the spouse of  
17 such a person is a party to the proceeding or an officer, director,  
18 or trustee of a party.

19 (5) A lawyer or a spouse of a lawyer in the proceeding is the  
20 spouse, former spouse, child, sibling, or parent of the judge or the  
21 judge's spouse or if such a person is associated in the private  
22 practice of law with a lawyer in the proceeding.

23 (6) (A) For any reason:

24 (i) The judge believes his or her recusal would further the  
25 interests of justice.

26 (ii) The judge believes there is a substantial doubt as to his or  
27 her capacity to be impartial.

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

30 (B) Bias or prejudice toward a lawyer in the proceeding may  
31 be grounds for disqualification.

32 (7) By reason of permanent or temporary physical impairment,  
33 the judge is unable to properly perceive the evidence or is unable  
34 to properly conduct the proceeding.

35 (8) (A) The judge has a current arrangement concerning  
36 prospective employment or other compensated service as a  
37 dispute resolution neutral or is participating in, or, within the last  
38 two years has participated in, discussions regarding the  
39 prospective employment or service, *or has been engaged in such*  
40 *employment or service*, and any of the following applies:

1 (i) The arrangement is, or the *prior employment or* discussion  
2 was, with a party to the proceeding.

3 (ii) The matter before the judge includes issues relating to the  
4 enforcement of an agreement to submit a dispute to an alternative  
5 dispute resolution ~~process~~.

6 ~~(iii) process or an award or other final decision by a dispute~~  
7 ~~resolution neutral.~~

8 (iii) *The judge directs the parties to participate in an*  
9 *alternative dispute resolution process in which the dispute*  
10 *resolution neutral will be an individual or entity with whom the*  
11 *judge has the arrangement, has previously been employed or*  
12 *served, or is discussing or has discussed the employment or*  
13 *service.*

14 (iv) The judge will select ~~or use~~ a dispute resolution neutral or  
15 entity to conduct an alternative dispute resolution process in the  
16 matter before the judge, and among those available for selection  
17 is an individual or entity with whom the judge has the  
18 arrangement or with whom the judge is discussing or has  
19 discussed the employment or service.

20 (B) For the purposes of this paragraph, all of the following  
21 apply:

22 (i) “Participating in discussions” or “has participated in  
23 discussion” means that the judge ~~actively participated in making~~  
24 ~~inquiries regarding the terms or conditions of solicited or~~  
25 ~~otherwise indicated an interest in accepting or negotiating~~  
26 possible employment or service as an alternative dispute  
27 resolution neutral *or responded to an unsolicited statement*  
28 *regarding, or an offer of, such employment or service by*  
29 *expressing an interest in that employment or service or*  
30 *encouraging the person making the statement or offer to provide*  
31 *additional information about that possible employment or*  
32 *service. If a judge’s response to an unsolicited statement*  
33 *regarding, a question about, or offer of, prospective employment*  
34 *or other compensated service as a dispute resolution neutral is*  
35 *limited to responding negatively, declining the offer, or declining*  
36 *to discuss such employment or service, that response does not*  
37 *constitute participating in discussions.*

38 (ii) “Party” includes the parent, subsidiary, or other legal  
39 affiliate of any entity that is a party and is involved in the

1 transaction, contract, or facts that gave rise to the issues subject  
2 to the proceeding.

3 (iii) “Dispute resolution neutral” means an arbitrator,  
4 mediator, temporary judge appointed under Section 21 of Article  
5 VI of the California Constitution, referee appointed under  
6 Section 638 or 639, special master, neutral evaluator, settlement  
7 officer, or settlement facilitator.

8 (b) A judge before whom a proceeding was tried or heard shall  
9 be disqualified from participating in any appellate review of that  
10 proceeding.

11 (c) At the request of a party or on its own motion an appellate  
12 court shall consider whether in the interests of justice it should  
13 direct that further proceedings be heard before a trial judge other  
14 than the judge whose judgment or order was reviewed by the  
15 appellate court.

16 *SEC. 2. It is the intent of the Legislature in enacting this act*  
17 *to construe and clarify the meaning and effect of existing law and*  
18 *to reject the interpretation given to the law in Hartford Casualty*  
19 *Ins. Co. v. Superior Court of Los Angeles (2004) 125 Cal.App.4th*  
20 *250.*