

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2487

Introduced by Assembly Member Feuer

February 19, 2010

~~An act to amend Section 1281.96 of the Code of Civil Procedure, relating to arbitration.~~ *An act to amend Section 170.1 of the Code of Civil Procedure, relating to judges.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as amended, Feuer. ~~Consumer arbitration cases: disclosures. Judges: disqualification.~~

Existing law sets forth the grounds for disqualification of a judge, including, but not limited to, if the judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

This bill would provide for the disqualification of a judge who has received a contribution in excess of \$1,500 from a party or counsel in a matter that is before the court, and either the contribution was received in support of the judge's last election, if the last election was within the last 6 years, or the contribution was received in anticipation of an upcoming election. The bill would further disqualify a judge based on a contribution of a lesser amount under specified circumstances. The bill would require the judge to disclose on the record any contribution from a party or counsel in a matter that is before the court that is required to be reported as specified, even if the amount would not require disqualification under these provisions.

~~Existing law regulates arbitration conducted pursuant to an arbitration agreement, as specified. Existing law requires a private arbitration~~

~~company involved in consumer arbitration cases to make certain information regarding those cases available to the public, as specified.~~

~~This bill would make a technical, clarifying change to that provision.~~

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 within
8 the meaning of this paragraph if the judge, or the spouse of the
9 judge, or a person within the third degree of relationship to either
10 of them, or the spouse of such a person is to the judge’s knowledge
11 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~~ a party in the present proceeding or gave advice
15 to ~~any~~ a party in the present proceeding upon ~~any~~ a matter involved
16 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 judge
22 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 advised
28 or in any way represented the public agency concerning the factual
29 or legal issues in the proceeding.

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

- 1 (B) A judge shall be deemed to have a financial interest within
2 the meaning of this paragraph if:
- 3 (i) A spouse or minor child living in the household has a
4 financial interest.
- 5 (ii) The judge or the spouse of the judge is a fiduciary who has
6 a financial interest.
- 7 (C) A judge has a duty to make reasonable efforts to inform
8 himself or herself about his or her personal and fiduciary interests
9 and those of his or her spouse and the personal financial interests
10 of children living in the household.
- 11 (4) The judge, or the spouse of the judge, or a person within the
12 third degree of relationship to either of them, or the spouse of such
13 a person is a party to the proceeding or an officer, director, or
14 trustee of a party.
- 15 (5) A lawyer or a spouse of a lawyer in the proceeding is the
16 spouse, former spouse, child, sibling, or parent of the judge or the
17 judge's spouse or if such a person is associated in the private
18 practice of law with a lawyer in the proceeding.
- 19 (6) (A) For any reason:
- 20 (i) The judge believes his or her recusal would further the
21 interests of justice.
- 22 (ii) The judge believes there is a substantial doubt as to his or
23 her capacity to be impartial.
- 24 (iii) A person aware of the facts might reasonably entertain a
25 doubt that the judge would be able to be impartial.
- 26 (B) Bias or prejudice toward a lawyer in the proceeding may
27 be grounds for disqualification.
- 28 (7) By reason of permanent or temporary physical impairment,
29 the judge is unable to properly perceive the evidence or is unable
30 to properly conduct the proceeding.
- 31 (8) (A) The judge has a current arrangement concerning
32 prospective employment or other compensated service as a dispute
33 resolution neutral or is participating in, or, within the last two years
34 has participated in, discussions regarding prospective employment
35 or service as a dispute resolution neutral, or has been engaged in
36 ~~such~~ *that* employment or service, and any of the following applies:
- 37 (i) The arrangement is, or the prior employment or discussion
38 was, with a party to the proceeding.
- 39 (ii) The matter before the judge includes issues relating to the
40 enforcement of either an agreement to submit a dispute to an

1 alternative dispute resolution process or an award or other final
2 decision by a dispute resolution neutral.

3 (iii) The judge directs the parties to participate in an alternative
4 dispute resolution process in which the dispute resolution neutral
5 will be an individual or entity with whom the judge has the
6 arrangement, has previously been employed or served, or is
7 discussing or has discussed the employment or service.

8 (iv) The judge will select a dispute resolution neutral or entity
9 to conduct an alternative dispute resolution process in the matter
10 before the judge, and among those available for selection is an
11 individual or entity with whom the judge has the arrangement,
12 with whom the judge has previously been employed or served, or
13 with whom the judge is discussing or has discussed the employment
14 or service.

15 (B) For the purposes of this paragraph, all of the following
16 apply:

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

32 (ii) “Party” includes the parent, subsidiary, or other legal affiliate
33 of any entity that is a party and is involved in the transaction,
34 contract, or facts that gave rise to the issues subject to the
35 proceeding.

36 (iii) “Dispute resolution neutral” means an arbitrator, mediator,
37 temporary judge appointed under Section 21 of Article VI of the
38 California Constitution, referee appointed under Section 638 or
39 639, special master, neutral evaluator, settlement officer, or
40 settlement facilitator.

1 (9) (A) *The judge has received a contribution in excess of one*
2 *thousand five hundred dollars (\$1500) from a party or counsel in*
3 *a matter that is before the court, and either of the following apply:*

4 (i) *The contribution was received in support of the judge's last*
5 *election, if the last election was within the last six years.*

6 (ii) *The contribution was received in anticipation of an*
7 *upcoming election.*

8 (B) *Notwithstanding subparagraph (A), the judge shall be*
9 *disqualified based on a contribution of a lesser amount if*
10 *subparagraph (A) of paragraph (6) applies.*

11 (C) *The judge shall disclose on the record any contribution*
12 *from a party or counsel in a matter that is before the court that is*
13 *required to be reported under subdivision (f) of Section 84211 of*
14 *the Government Code, even if the amount would not require*
15 *disqualification under this paragraph.*

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

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

24 ~~SECTION 1. Section 1281.96 of the Code of Civil Procedure~~
25 ~~is amended to read:~~

26 ~~1281.96. (a) Except as provided in paragraph (2) of subdivision~~
27 ~~(b), any private arbitration company that conducts, administers,~~
28 ~~or is otherwise involved in, a consumer arbitration, shall collect,~~
29 ~~publish at least quarterly, and make available to the public in a~~
30 ~~computer-searchable format, which shall be accessible at the~~
31 ~~Internet Web site of the private arbitration company, if any, and~~
32 ~~on paper upon request, all of the following information regarding~~
33 ~~each consumer arbitration within the preceding five years:~~

34 ~~(1) The name of the nonconsumer party, if the nonconsumer~~
35 ~~party is a corporation or other business entity.~~

36 ~~(2) The type of dispute involved, including goods, banking,~~
37 ~~insurance, health care, employment, and, if it involves employment,~~
38 ~~the amount of the employee's annual wage divided into the~~
39 ~~following ranges: less than one hundred thousand dollars~~
40 ~~(\$100,000), one hundred thousand dollars (\$100,000) to two~~

1 hundred fifty thousand dollars (\$250,000), inclusive, and over two
2 hundred fifty thousand dollars (\$250,000).

3 ~~(3) Whether the consumer or nonconsumer party was the~~
4 ~~prevailing party.~~

5 ~~(4) On how many occasions, if any, the nonconsumer party has~~
6 ~~previously been a party in an arbitration or mediation administered~~
7 ~~by the private arbitration company.~~

8 ~~(5) Whether the consumer party was represented by an attorney.~~

9 ~~(6) The date the private arbitration company received the~~
10 ~~demand for arbitration, the date the arbitrator was appointed, and~~
11 ~~the date of disposition by the arbitrator or private arbitration~~
12 ~~company.~~

13 ~~(7) The type of disposition of the dispute, if known, including~~
14 ~~withdrawal, abandonment, settlement, award after hearing, award~~
15 ~~without hearing, default, or dismissal without hearing.~~

16 ~~(8) The amount of the claim, the amount of the award, and any~~
17 ~~other relief granted, if any.~~

18 ~~(9) The name of the arbitrator, his or her total fee for the case,~~
19 ~~and the percentage of the arbitrator's fee allocated to each party.~~

20 ~~(b) (1) If the information required by subdivision (a) is provided~~
21 ~~by the private arbitration company in a computer-searchable format~~
22 ~~at the company's Internet Web site and may be downloaded without~~
23 ~~any fee, the company may charge the actual cost of copying to any~~
24 ~~person who requests the information on paper. If the information~~
25 ~~required by subdivision (a) is not accessible by the Internet, the~~
26 ~~company shall provide that information without charge to any~~
27 ~~person who requests the information on paper.~~

28 ~~(2) Notwithstanding paragraph (1), a private arbitration company~~
29 ~~that receives funding pursuant to Chapter 8 (commencing with~~
30 ~~Section 465) of Division 1 of the Business and Professions Code,~~
31 ~~and that administers or conducts fewer than 50 consumer~~
32 ~~arbitrations per year may collect and publish the information~~
33 ~~required by subdivision (a) semiannually, provide the information~~
34 ~~only on paper, and charge the actual cost of copying.~~

35 ~~(c) This section shall apply to any consumer arbitration~~
36 ~~commenced on or after January 1, 2003.~~

1 ~~(d) No private arbitration company shall have any liability for~~
2 ~~collecting, publishing, or distributing the information required by~~
3 ~~this section.~~

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