

AMENDED IN ASSEMBLY APRIL 20, 2010

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 170.1 of the Code of Civil Procedure, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as amended, Feuer. 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.

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 a party in the present proceeding or gave advice to
15 a party in the present proceeding upon a matter involved in the
16 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.

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

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

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

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

5 (4) The judge, or the spouse of the judge, or a person within the
6 third degree of relationship to either of them, or the spouse of such
7 a person is a party to the proceeding or an officer, director, or
8 trustee of a party.

9 (5) A lawyer or a spouse of a lawyer in the proceeding is the
10 spouse, former spouse, child, sibling, or parent of the judge or the
11 judge's spouse or if such a person is associated in the private
12 practice of law with a lawyer in the proceeding.

13 (6) (A) For any reason:

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

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

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

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

22 (7) By reason of permanent or temporary physical impairment,
23 the judge is unable to properly perceive the evidence or is unable
24 to properly conduct the proceeding.

25 (8) (A) The judge has a current arrangement concerning
26 prospective employment or other compensated service as a dispute
27 resolution neutral or is participating in, or, within the last two years
28 has participated in, discussions regarding prospective employment
29 or service as a dispute resolution neutral, or has been engaged in
30 that employment or service, and any of the following applies:

31 (i) The arrangement is, or the prior employment or discussion
32 was, with a party to the proceeding.

33 (ii) The matter before the judge includes issues relating to the
34 enforcement of either an agreement to submit a dispute to an
35 alternative dispute resolution process or an award or other final
36 decision by a dispute resolution neutral.

37 (iii) The judge directs the parties to participate in an alternative
38 dispute resolution process in which the dispute resolution neutral
39 will be an individual or entity with whom the judge has the

1 arrangement, has previously been employed or served, or is
2 discussing or has discussed the employment or service.

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

10 (B) For the purposes of this paragraph, all of the following
11 apply:

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

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

31 (iii) “Dispute resolution neutral” means an arbitrator, mediator,
32 temporary judge appointed under Section 21 of Article VI of the
33 California Constitution, referee appointed under Section 638 or
34 639, special master, neutral evaluator, settlement officer, or
35 settlement facilitator.

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

39 (i) The contribution was received in support of the judge’s last
40 election, if the last election was within the last six years.

1 (ii) The contribution was received in anticipation of an upcoming
2 election.

3 (B) Notwithstanding subparagraph (A), the judge shall be
4 disqualified based on a contribution of a lesser amount if
5 subparagraph (A) of paragraph (6) applies.

6 (C) The judge shall disclose ~~on the record~~ any contribution from
7 a party or counsel in a matter that is before the court that is required
8 to be reported under subdivision (f) of Section 84211 of the
9 Government Code, even if the amount would not require
10 disqualification under this paragraph. *The manner of disclosure*
11 *shall be the same as that provided in Canon 3E of the Code of*
12 *Judicial Ethics.*

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

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