

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY MAY 4, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2487**

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**Introduced by Assembly Member Feuer**

February 19, 2010

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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 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~~ *lawyer in the proceeding*, 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 any contribution from a party or ~~counsel~~ *lawyer* 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. The bill would

permit the party that did not make the contribution to waive this disqualification, *except as specified*.

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 are 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:

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

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

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

9 (4) The judge, or the spouse of the judge, or a person within the  
10 third degree of relationship to either of them, or the spouse of such  
11 a person is a party to the proceeding or an officer, director, or  
12 trustee of a party.

13 (5) A lawyer or a spouse of a lawyer in the proceeding is the  
14 spouse, former spouse, child, sibling, or parent of the judge or the  
15 judge's spouse or if such a person is associated in the private  
16 practice of law with a lawyer in the proceeding.

17 (6) (A) For any reason:

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

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

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

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

26 (7) By reason of permanent or temporary physical impairment,  
27 the judge is unable to properly perceive the evidence or is unable  
28 to properly conduct the proceeding.

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

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

37 (ii) The matter before the judge includes issues relating to the  
38 enforcement of either an agreement to submit a dispute to an  
39 alternative dispute resolution process or an award or other final  
40 decision by a dispute resolution neutral.

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

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

13 (B) For the purposes of this paragraph, all of the following  
14 apply:

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

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

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

39 (9) (A) The judge has received a contribution in excess of one  
40 thousand five hundred dollars (\$1500) from a party or ~~counsel in~~

1 ~~a matter that is before the court~~ *lawyer in the proceeding*, and  
2 either of the following applies:

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

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

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

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

17 (D) ~~The~~ *Notwithstanding paragraph (1) of subdivision (b) of*  
18 *Section 170.3, the* disqualification required under this paragraph  
19 may be waived by the party that did not make the contribution  
20 *unless there are other circumstances that would prohibit a waiver*  
21 *pursuant to paragraph (2) of subdivision (b) of Section 170.3.*

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

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