

AMENDED IN SENATE JUNE 1, 2005
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

An act to amend Section 170.1 of the Code of Civil Procedure, relating to judges, *and declaring the urgency thereof.*

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 *such* prospective employment or service, and specified conditions apply.

This bill would add to those grounds for disqualification when 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.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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
28 advised or in any way represented the public agency concerning
29 the factual 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
3 interests and those of his or her spouse and the personal financial
4 interests of children living in the household.

5 (4) The judge, or the spouse of the judge, or a person within
6 the third degree of relationship to either of them, or the spouse of
7 such a person is a party to the proceeding or an officer, director,
8 or 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
27 dispute resolution neutral or is participating in, or, within the last
28 two years has participated in, discussions regarding ~~the~~
29 prospective employment or service *as a dispute resolution*
30 *neutral*, or has been engaged in such employment or service, and
31 any of the following applies:

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

34 (ii) The matter before the judge includes issues relating to the
35 enforcement of an agreement to submit a dispute to an alternative
36 dispute resolution

37 process or an award or other final decision by a dispute
38 resolution neutral.

39 (iii) The judge directs the parties to participate in an
40 alternative dispute resolution process in which the dispute

1 resolution neutral will be an individual or entity with whom the
2 judge has the arrangement, has previously been employed or
3 served, or is discussing or has discussed the employment or
4 service.

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

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

13 (i) “Participating in discussions” or “has participated in
14 discussion” means that the judge solicited or otherwise indicated
15 an interest in accepting or negotiating possible employment or
16 service as an alternative dispute resolution neutral or responded
17 to an unsolicited statement regarding, or an offer of, such
18 employment or service by expressing an interest in that
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
24 dispute resolution neutral is limited to responding negatively,
25 declining the offer, or declining to discuss such employment or
26 service, that response does not constitute participating in
27 discussions.

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

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

37 (iv) *“Submit a dispute to an alternative dispute resolution
38 process” shall not include a judge’s reference of a case to a
39 court-sponsored alternative dispute resolution program in which*

1 *the judge has no part in selection of the neutral assigned to the*
2 *case.*

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

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

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

16 SEC. 3. *This act is an urgency statute necessary for the*
17 *immediate preservation of the public peace, health, or safety*
18 *within the meaning of Article IV of the Constitution and shall go*
19 *into immediate effect. The facts constituting the necessity are:*

20 *In order to clarify the law to avoid wholesale disqualifications*
21 *of civil judges that could severely hamper a trial court's ability*
22 *to manage its civil litigation calendar, it is necessary for this act*
23 *to take effect immediately.*