

AMENDED IN SENATE JUNE 29, 2005

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, *to take effect immediately*.

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.

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

Vote: $\frac{2}{3}$. 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.

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

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

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

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

15 (6) (A) For any reason:

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

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

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

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

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

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

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

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

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

7 (iv) The judge will select a dispute resolution neutral or entity
8 to conduct an alternative dispute resolution process in the matter
9 before the judge, and among those available for selection is an
10 individual or entity with whom the judge has the arrangement or
11 with whom the judge is discussing or has discussed the
12 employment 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, such
20 employment or service by expressing an interest in that
21 employment or service, *making any 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
27 dispute resolution neutral is limited to responding negatively,
28 declining the offer, or declining to discuss such employment or
29 service, that response does not constitute participating in
30 discussions.

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

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

1 ~~(iv) “Submit a dispute to an alternative dispute resolution~~
2 ~~process” shall not include a judge’s reference of a case to a~~
3 ~~court-sponsored alternative dispute resolution program in which~~
4 ~~the judge has no part in selection of the neutral assigned to the~~
5 ~~case.~~

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

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

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

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

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