

Staff Memorandum 2025-04
Automatic Disqualifications of a Judge and Related Matters

At its May 2025 meeting, the Committee on Revision of the Penal Code will consider the power given to prosecutors and defense attorneys to automatically disqualify judges using Code of Civil Procedure § 170.6.

This memorandum gives general background and staff recommendations for the Committee’s consideration.

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Introduction

California is one of a small minority of states that allows attorneys to automatically disqualify a judge from presiding over a case, a practice sometimes called “papering” a judge.¹ To obtain an automatic disqualification, an attorney need only conclusory state that a judge is prejudiced against them or their interest.² No further information is required and a judge, if the request is timely brought, must grant the disqualification.³

California law also allows “blanket” disqualifications to a judge — when challenges are filed systematically so that the judge is unable to hear a particular type of case or all criminal cases. Even among states that allow automatic disqualifications, a number have forbidden or restricted blanket challenges, including recent significant legislative action in Oregon.⁴ California also appears to be the only state where blanket challenges occur with any regularity. And

¹ Code of Civil Procedure § 170.6.
² Code of Civil Procedure § 170.6(a)(2).
³ Code of Civil Procedure § 170.6(a)(3).
⁴ See Oregon SB 807 (2023 Regular Session) (creating Oregon Rev. Stat. § 14.260(7)).

though the California Supreme Court in 1977 affirmed the legality of blanket challenges, the Court has recently granted review in a case challenging this practice.⁵ While automatic disqualifications are permitted in both civil and criminal cases, they present special issues in criminal cases where institutional players (a county District Attorney's office or public defender) represent all or a significant number of the cases.

Disqualifying Judges in California

Cause disqualifications (Code of Civil Procedure § 170.1)

Like every other state and federal law, California law requires judges to recuse themselves if they cannot be impartial. These laws ensure both actual impartiality, a requirement for due process, and the appearance of impartiality, which ensures public confidence in the courts.⁶

In particular, Code of Civil Procedure § 170.1 requires a judge to disqualify themselves from hearing cases in specified circumstances, including if they have previously represented a party, have personal knowledge of disputed facts, or have a financial stake in the case.⁷ A judge should also disqualify if “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”⁸

Parties can also request disqualification of a judge for a reason specified in § 170.1.⁹ The challenged judge may then agree that they appear to be disqualified or contest the allegations in writing and provide additional facts within 10 days of service.¹⁰ A different judge then decides the question of disqualification.¹¹ A party bringing a challenge in these cases has a “heavy burden” to establish the appearance of bias, not actual bias.¹² The standard is objective: whether the average person would believe the judge is biased.¹³ Courts have routinely held that adverse or erroneous rulings, especially ones that are subject to appellate review, do not establish judicial bias.¹⁴

⁵ *Solberg v. Superior Court*, 19 Cal.3d 182, 195, 204 (1977); *J.O. v. Superior Court (San Joaquin County Public Conservator)*, Supreme Court No. S287285, review granted December 18, 2024.

⁶ Debra Lyn Bassett, *Judicial Disqualification in the Federal Courts*, 87 Iowa Law Review 1213, 1218 (2002).

⁷ Code of Civil Procedure § 170.1(a)(1)–(3).

⁸ Code of Civil Procedure § 170.1(a)(b)(A)(iii).

⁹ Code of Civil Procedure § 170.3(c). Such a request must be made “at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification.” Code of Civil Procedure § 170.3(c)(1).

¹⁰ Code of Civil Procedure § 170.3(c)(4).

¹¹ Code of Civil Procedure § 170.3(c)(5)–(6).

¹² *Wechsler v. Superior Court*, 224 Cal.App.4th 384, 394 (2014).

¹³ *United Farm Workers of America v. Superior Court*, 170 Cal.App.3d 97, 104 (1985).

¹⁴ See e.g. *People v. Farley*, 46 Cal.4th 1053, 1110 (2009).

Complaints to the Commission on Judicial Performance

In addition to disqualifying a judge from a particular case, a litigant who believes a judge has engaged in inappropriate behavior can file a complaint with the Commission on Judicial Performance, an independent state agency that investigates complaints of judicial misconduct — conduct in conflict with standards set out in the Code of Judicial Ethics — and incapacity.¹⁵ If the Commission concludes improper conduct has occurred it may issue an advisory letter or a private admonishment, which are confidential, or in cases of more serious misconduct, issue a public admonishment (censure) or remove a judge from office.¹⁶

In 2024, the commission considered 1,718 new complaints about active and former judges and issued discipline in 39 complaints. The average time from the filing of a complaint to the disposition was almost 4 months.¹⁷ In 2024, the commission determined that there was not a sufficient showing of misconduct in 1,600 of the complaints and closed another 71 matters without discipline following a preliminary investigation. The primary types of misconduct resulting in discipline were demeanor (16) and bias or appearance of bias not directed toward a particular class (10).¹⁸

Automatic disqualifications (Code of Civil Procedure § 170.6)

California law also provides a more powerful way to disqualify a judge. Applied to criminal cases since 1959, Code of Civil Procedure § 170.6 allows an attorney to disqualify any judge if the attorney alleges that the judge is “prejudiced against a party or attorney.”¹⁹ To make these allegations, an attorney needs only to note the disqualification orally under oath or file a boilerplate motion prescribed in the statute. No supporting facts or other material is required — except that the attorney must conclusorily swear under oath that the attorney “believes that he

¹⁵ Cal. Const. art. VI, sec. 18.

¹⁶ State of California, Commission on Judicial Performance, *2024 Annual Report*, 2–3 (March 2025).

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 17. Other types of misconduct included on-bench abuse of authority in performance of judicial duties, ex parte communications, sexual harassment, and failure to ensure rights of the parties appearing before the judge.

¹⁹ Code of Civil Procedure § 170.6(a)(2). A 1937 version of this disqualification law did not require a statement under oath that the court was biased. *Austin v. Lambert*, 11 Cal.2d 73 (1938). (It also did not allow prosecutors to automatically disqualify judges. *Id.* at 74–75.) The California Supreme Court found that this lack of a sworn statement was fatal to the disqualification law. *Id.* 76–78. A revised version of the law was enacted in 1957 — and expanded to criminal cases in 1959 — that required the sworn statement. This updated law was approved by the California Supreme Court. *Johnson v. Superior Court*, 50 Cal.2d 693, 696 (1958).

or she cannot[] have a fair and impartial trial or hearing before the judge, court commissioner, or referee.”²⁰ A party can make only one such motion in a case.²¹

If a motion complies with the statutory conditions on form and timeliness — it must be made before any hearing or trial and within 10 days after notice of a judge’s assignment to the case — a court must grant it “even if the court suspects that the party has abused its right to utilize section 170.6.”²² Once disqualified, a judge may not hear any matter in the case involving a contested issue of fact or law for the duration of the case.²³

The only substantive limit that courts have placed on 170.6 challenges is that they cannot be brought based on the judge’s race.²⁴

California does not collect any data on 170.6 challenges.²⁵

“Blanket” challenges

While 170.6 challenges are generally exercised on a case-specific basis, a public agency such as a prosecutor’s office or public defender can use 170.6 challenges systematically against a judge so that the judge can no longer hear a particular type of case, such as domestic violence prosecutions, or any criminal cases.²⁶

The effect of a blanket challenge can be felt throughout the courthouse but the statute does not give judges a way to respond to the challenge and they are otherwise prevented from commenting on the challenge by ethical rules.²⁷

Proponents of blanket challenges argue that they are an appropriate method to avoid a judge for important reasons, such as a judge being unduly oriented

²⁰ Code of Civil Procedure § 170.6(a)(2). See *Autoland v. Superior Court*, 205 Cal.App.3d 857, 862 (1988) (describing the “empty pretension” of the sworn statement).

²¹ Code of Civil Procedure § 170.6(a)(2).

²² *La Seigneurie U.S. Holdings, Inc. v. Superior Court*, 29 Cal.App.4th 1500, 1505 (1994). See also *People v. Superior Court (Tejeda)*, 1 Cal.App.5th 892, 901 (2016) (court cannot “assess[] the motivations and weigh[] the consequences” of § 170.6 disqualifications).

²³ Code of Civil Procedure § 170.6(a)(1).

²⁴ *People v. Superior Court (Williams)*, 8 Cal.App.4th 688 (1992).

²⁵ A recent law review article examined 158 published orders on Lexis in 2021. It appears that almost all of the examined orders arose in civil cases. The author found that 34% of the challenges reviewed were denied for lack of jurisdiction, timeliness, or being more than one motion. Many of the challenged judges had available reviews on “The Robing Room” (an anonymous review website) which included comments about bias, incompetence (half), unpleasant temperament, delay, and dislike of the judge’s staff. Sarah Park, *Note: Perfecting the Judicial Peremptory Challenge: A New Approach Using Preliminary Data on California Judges in 2021*, 97 Southern California Law Review 253, 284 (2024).

²⁶ See, e.g., *People v. Superior Court (Tejeda)*, 1 Cal.App.5th 892, 905 (2016).

²⁷ See, e.g., California Code of Judicial Ethics, Canon 3B(9) (largely forbidding public comments on pending cases).

towards criminal defendants or prosecutors or having a demeanor ill-suited to the bench.²⁸ Informal constraints — such as the danger a case will be reassigned to an even more disagreeable judge or attorneys will injure their own reputation — may also deter abuse of automatic disqualifications.²⁹

In 1977, the California Supreme Court considered these dynamics upheld the use of blanket challenges in *Solberg v. Superior Court*. The Court concluded that blanket challenges did not violate the separation of powers by delegating the grounds for disqualifications from the Legislature to the executive branch (in the form of prosecutors and private litigants) or otherwise impair the independence of the judiciary. Though the Court said that it “strongly disapproved” of blanket challenges and accepted that they lead to “judge-shopping” and the intimidation of judges, these were “a relatively inconsequential price to be paid for the efficient and discreet procedure provided in section 170.6.”³⁰

In the decades following *Solberg*, appellate courts have questioned its holding.³¹ A high-profile example arose in Orange County in 2015. After determining that the District Attorney’s office had committed unconstitutional misconduct in pending murder cases, then-Judge Thomas Goethals was blanket challenged by the District Attorney’s office.³² Because Judge Goethals was one of a small number of judges assigned to handle the most complex cases, the resulting readjustment in court assignments caused a “crisis” and “chaos” in the Superior Court.³³

But an appellate court held that the blanket challenge — even though an “extraordinary abuse[]” that one judge concluded was an attempt to “intimidate, punish, and/or silence Judge Goethals, and to send a warning to the other local judges” — was permitted under *Solberg*.³⁴ The appellate court noted that blanket challenges “seriously undermine[] the principle of judicial independence and distort[] the appearance, if not the reality, of judicial impartiality.”³⁵ Three

²⁸ Jeffrey W. Stempel, *Judicial Peremptory Challenges as Access Enhancers*, 86 Fordham Law Review 2263, 2269 (2018).

²⁹ Stempel, *Judicial Peremptory Challenges as Access Enhancers*, at 2276–2277.

³⁰ *Solberg v. Superior Court*, 19 Cal.3d 182, 195, 204 (1977).

³¹ See *NutraGenetics, LLC v. Superior Ct.*, 179 Cal. App. 4th 243, 260 (2009); *People v. Superior Court (Tejeda)*, 1 Cal.App.5th 892, 903, 907–911 (2016) (noting that most of *Solberg* appeared to be dicta and urging the California Supreme Court to revisit the case).

³² *People v. Superior Court (Tejeda)*, 1 Cal.App.5th 892, 897, 922 (2016).

³³ *Id.* at 898, 910.

³⁴ *Id.* at 910; *id.* at 930 (Thompson, J., dissenting) (quoting findings of the Superior Court judge who reviewed the 170.6 motions).

³⁵ *Id.* at 910 (quotation marks and citation omitted).

Justices of the California Supreme Court voted to review the case, but that was insufficient for the Court to take up the case.³⁶

More recently, the California Supreme Court agreed to revisit *Solberg* in a case where the San Joaquin County Counsel's Office, representing the Public Conservator, blanket disqualified a judge for all mental health cases.³⁷ The judge was ultimately reassigned to another department.³⁸

Recent examples of blanket challenges

In addition to the blanket challenge in Orange County described above, there have been a number of other recent blanket challenges in criminal cases. This catalog shows examples from the last five years:

- In March 2025, the San Francisco District Attorney's Office challenged a judge as soon as she was assigned to criminal court but before she had presided over any criminal cases.³⁹
- In August 2024, the same office challenged a judge in two different criminal courtrooms until she was moved from criminal court altogether. The judge was reassigned to Family Court.⁴⁰
- In 2024, the Humboldt County District Attorney's Office challenged all felony cases heard by a judge. The judge was reassigned to family law cases.⁴¹
- In 2023, the Sacramento County District Attorney's Office challenged a judge in every criminal case. Some attorneys believed the blanket challenge was sparked by the judge's resentencing of a defendant in a felony-murder case.⁴²

³⁶ *People v. Superior Court (Tejeda)*, Supreme Court Case No. S236991, petition for review denied, November 30, 2016 [Justices Werdegarr, Liu, and Cuellar were of the opinion the petition should be granted].

³⁷ *J.O. v. Superior Court (San Joaquin County Public Conservator)*, Supreme Court No. S287285, review granted December 18, 2024.

³⁸ *J.O. v. Superior Court (San Joaquin County Public Conservator)*, Supreme Court No. S287285, Traverse to the Public Conservator's Return, 26, January 29, 2025.

³⁹ Eleni Balakrishnan, *DA Jenkins' Prosecutors Challenge S.F. Judge En Masse Before She's Heard a Single Case*, Mission Local, March 4, 2025.

⁴⁰ *Id.*

⁴¹ Kimberly Wear, *Court Challenge: DA Issues "Blanket Disqualification" of Local Judge in Long Controversial Practice*, North Coast Journal of Politics, People & Art, March 14, 2024.

⁴² Sam Stanton, *Why Is Sacramento's DA Trying to Stop Criminal Cases From Going Before One Judge?*, The Sacramento Bee, August 7, 2023.

- In April 2023, the Alameda County District Attorney's Office declared an intent to blanket challenge a judge after he rejected a plea agreement offered by the prosecutor.⁴³
- In 2022, the head deputy district attorney in Los Angeles County issued an order to prosecutors in the Pomona courthouse to challenge a judge, after he had reinstated a sentencing enhancement that the prosecutor had sought to dismiss.⁴⁴
- In 2022, the San Francisco District Attorney's Office imposed a blanket challenge against Judge J. Anthony Kline, a 42-year judicial veteran, in juvenile delinquency cases. Cases were subsequently assigned to one of the two remaining juvenile court judges.⁴⁵
- In 2021, the Calaveras County District Attorney filed dozens of motions against a judge, disqualifying him from most criminal cases. Since the county only had 2 judges, visiting judges from surrounding counties were needed to preside over criminal cases.⁴⁶ The judge was later admonished by the Commission on Judicial Performance for engaging in inappropriate demeanor, including making disparaging comments to attorneys, litigants, and victims.⁴⁷

Automatic Disqualification in Other States

Automatic disqualification of a judge without cause in criminal cases, as allowed under California law, is allowed in 13 other states. But only 5 of these states, allow blanket challenges as they occur in California.⁴⁸ The other 8 states have either expressly prohibited or placed limits on blanket challenges, as described below. Note that in other states automatic disqualifications are governed either

⁴³ Audrey Asistio, *Alameda County Judge May Be Disqualified From Hearing Any Criminal Cases by DA*, NBC Bay Area, April 5, 2023.

⁴⁴ LaDoris Cordell, *Opinion: How Bay Area Prosecutors Are Weaponizing California Statutes to Attack Judicial Independence*, San Francisco Chronicle, April 21, 2023.

⁴⁵ Bob Egelko, *S.F. D.A. Brooke Jenkins Is Removing One of California's Most Veteran Judges – Without Explanation – From New Juvenile Cases*, San Francisco Chronicle, October 19, 2023.

⁴⁶ Dakota Morlan, *Calaveras County DA "Papering" Superior Court Judge With Disqualifications*, Calaveras Enterprise, May 7, 2021.

⁴⁷ California Commission on Judicial Performance, Press Release: Commission on Judicial Performance Issues Public Admonishment of Judge Timothy S. Healy, July 16, 2024.

⁴⁸ Alaska Rule of Crim. Proc. 25 & Alaska Stat. § 22.20.022; Missouri Rule of Crim. Proc. 32.07; N.D. Cent. Code § 29-15-21; South Dakota Codified Laws § 15-12-22; Washington Rev. Code Ann. § 4.12.040-4.12.050.

by statutes enacted by state legislatures or court rules promulgated by state courts.⁴⁹

In addition, the only recent changes to the rules around automatic disqualifications have been to limit or eliminate them:

- In 2013, because of misuse of the rule, the Wyoming Supreme Court suspended and ultimately repealed the rule of criminal procedure allowing automatic disqualifications.⁵⁰
- In 2015, the Montana Supreme Court amended the rule on substitution of judges by imposing a filing fee of \$100 on each motion, on both the prosecution and the defense, including the public defender, making it fiscally prohibitive to blanket challenge a judge. (The fee had previously only applied in civil cases.) The Court also prohibited automatic disqualifications in dependency, delinquency, and mental health cases.⁵¹
- In 2023, with strong support from judges, Oregon amended its law to allow a judge to challenge a party that files motions to disqualify that “effectively denies the judge assignment to a criminal or juvenile delinquency docket.”⁵²

Other states have taken different approaches to limit blanket challenges:

- Arizona requires each party to affirm that the challenge is not being made for the purpose of a blanket challenge.⁵³
- State supreme courts in Illinois and Minnesota prohibit prosecutors and government agencies from exercising blanket challenges because they violate the separation of powers.⁵⁴ In addition, Wisconsin does not allow prosecutors to make automatic disqualifications at all, even non-blanket ones.⁵⁵

⁴⁹ See generally Thomas Ward and Brandon Charles Osowski, *The End of Batson? Rulemaking, Race, and Criminal Procedure Reform*, 124 Columbia Law Review 1, 10–17 (2024) (describing scope of court-made procedural rules).

⁵⁰ Supreme Court of the State of Wyoming, Order Repealing Rule 21.1(a) of the Wyoming Rules of Criminal Procedure, November 26, 2013.

⁵¹ Montana Code Ann. § 3-1-804(3); Supreme Court of the State of Montana, Order: In re Revised Rule on Substitution of District Judges, No. AF 09-0289, March 24, 2015.

⁵² Oregon Rev. Stat. § 14.260(7)(a).

⁵³ Arizona Rule of Crim. Proc. 10.2(b)(2)(E).

⁵⁴ *State v. Erickson*, 589 N.W.2d 481, 485 (1999) (Minnesota); *People ex rel. Baricevic v. Wharton*, 136 Ill.2d 423, 437 (1990) (Illinois). In Wisconsin, only the defendant may substitute a judge by statute. Wisconsin Stat. § 971.20(2).

⁵⁵ Wisconsin Stat. § 971.20(2).

- Idaho and New Mexico prohibit blanket challenges to the extent they interfere with or obstruct the administration of justice.⁵⁶ After the trial court notifies the Chief Justice, the Chief Justice may suspend a party's or office's ability to use an automatic challenge altogether.⁵⁷ In 2023, the Idaho Supreme Court suspended the disqualification without cause rule in three judicial districts for 7 months.⁵⁸

Staff Recommendation

The Committee may wish to consider the following proposal to address the issues raised in this memorandum.

- **Limit blanket challenges in criminal cases under Code of Civil Procedure § 170.6.**

Adopt the best practices of other states that have limited blanket challenges — for example, by allowing the judge targeted by blanket disqualifications to challenge the motions, permitting a presiding judge to overrule blanket challenges, or disallowing prosecutors from filing blanket disqualifications — while still allowing individual case-based automatic disqualifications under Code of Civil Procedure § 170.6.

Conclusion

Automatic judicial disqualifications have been a part of California criminal law for more than 65 years. But California is among a shrinking minority of states that allow the practice and in an even smaller minority that allow blanket disqualifications from a prosecutor or public defender. The Committee should recommend changes to California law that curb abuse of this rule while maintaining its appropriate use in some cases.

Respectfully submitted,

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⁵⁶ Idaho Criminal Rule 25(a)(12); New Mexico Rule of Court 5-106(G).

⁵⁷ *Id.*

⁵⁸ Supreme Court of the State of Idaho, Order: In Re: Termination of Orders Suspending Disqualification Without Cause Rules, June 27, 2024.