

First Supplement to Memorandum 2025-04
Automatic Disqualifications of a Judge and Related Matters

Memorandum 2025-04 gave an overview of the power given to prosecutors and defense attorneys to automatically disqualify judges using Code of Civil Procedure § 170.6. This supplement presents and summarizes a written submission from Judge Daniel P. Maguire, of Yolo County Superior Court, a panelist scheduled to appear before the Committee on May 23, 2025.

Daniel P. Maguire, Judge, Yolo County Superior Court

In addition to providing an overview of Code of Civil Procedure section 170.6, Judge Maguire's submission explains the deleterious effects of blanket disqualifications. Judge Maguire notes that a blanket disqualification disrupts court administration, causing delays and an inefficient allocation of judicial resources. It may operate as a chilling effect on judges who feel pressured to adjust their rulings in order to avoid removal from the criminal assignment, which ultimately erodes judicial independence. It is also a poor tool to address genuine concerns about bias or prejudice since the removed judge receives no information about the basis for the challenge.

Respectfully submitted,

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Peremptory Judicial Disqualification
Submitted by Daniel P. Maguire¹, Judge, Yolo Superior Court
Panel Discussion before the Committee on Revision of the Penal Code
May 23, 2025

Overview

Code of Civil Procedure section 170.6 (“CCP 170.6”) allows litigants to peremptorily disqualify California judicial officers, without articulating or substantiating a specific reason other than a formulaic allegation of bias or prejudice. Although each side only gets one peremptory disqualification per case, there is no other limit on the number of peremptory disqualifications.

Public agency litigants sometimes issue “blanket” disqualifications against a judicial officer, removing the judicial officer from all or substantially all of their newly-assigned cases. Experience teaches us that CCP 170.6 is prone to disruptive misuse – namely blanket disqualifications – and serves no valid purpose. The statute should be repealed.

Background

Peremptory judicial disqualification did not exist in the common law, but was adopted in some² states in this country in the late 1800s, and in California in 1937³. Until 1959, the California statute only applied to civil cases.

The California Supreme Court expressed concern about misuse of CCP 170.6 in *Solberg v. Superior Court* (1977) 19 Cal.3d 182, but left it to the Legislature to determine if reform was needed.

On December 28, 2024, the California Supreme Court granted review in *O.J. v. S.C.*, posing this question: “[s]hould this court’s decision in *Solberg v. Superior Court* (1977) 19 Cal.3d 182 be overruled or limited insofar as it allowed a public agency to bring ‘blanket challenges’ against particular judges under Code of Civil Procedure section 170.6?”

¹ The author is the co-chair of a California Judges Association (“CJA”) subcommittee studying CCP 170.6. As the CJA has not yet taken a position on reform or repeal of CCP 170.6, this statement is his alone. His experience as presiding judge of his court from 2021 to 2024 prompted concern about the effects of CCP 170.6 on the administration of justice.

² [*Judicial Substitution – An Examination of Judicial Peremptory Challenges in the States*](#), written in 1986, counted 16 states with peremptory judicial disqualification.

³ Between 1853 and 1933, California justices of the peace were subject to peremptory challenge.

Effects of Blanket CCP 170.6 Disqualification

Blanket peremptory judicial disqualification has deleterious effects:

- Disruption of court administration, as staff and judicial officers scramble to re-assign cases while respecting speedy trial rights and other deadlines.
- Inefficient allocation of judicial resources, as the challenged judge's courtroom is underutilized and others become overfilled.
- Delay as cases get shuffled between departments.
- Concerns have been raised about discriminatory use of CCP 170.6 against female and minority judicial officers.⁴
- Potential chilling effect on judges who may feel pressured to adjust their rulings to avoid removal from their assignment.
- Usurpation of the presiding judge's statutory authority to make assignments, as CCP 170.6 gives public agency litigants virtual veto-power over judicial assignments. The Government Code and the California Rules of Court entrust this power to the presiding judge.
- Degradation of judicial independence, as disappointed executive-branch agencies can "punish" judges for their rulings by forcing their re-assignment. Perceived error should be addressed by appeal or writ, not interference with a judicial officer's assignment.

Moreover, CCP 170.6 is a poor tool to address genuine concerns about judicial bias or prejudice. Because the statute only requires an incantation, without any substantive information about the alleged bias or prejudice, the removed judicial officer receives little useful information for self-examination or improvement.

Repeal or Reform

No valid policy justification exists for peremptory judicial disqualification, as the law already provides an adequate mechanism to adjudicate concerns about judicial bias or prejudice. (CCP 170.1 and CCP 170.3) California should join the majority of states and the federal judicial system in allowing judicial disqualification only for articulated and substantiated cause. Alternatively, CCP 170.6 should be reformed to prohibit or curtail blanket peremptory judicial disqualification.

⁴ Legislative concerns about discriminatory use of peremptory *juror* disqualifications led to the enactment of CCP 231.7.

References

1. [Code of Civil Procedure section 170.6](#).
2. [Disqualification of Federal Judges by Peremptory Disqualification](#) (1981) [proposal not enacted].
3. [Judicial Substitution – An Examination of Judicial Peremptory Challenges in the States](#) (1986)
4. [Austin v. Lambert](#) (1938) 11 Cal.2d 713 [invalidating earlier version of peremptory judicial disqualification]
5. [Johnson v. Superior Court](#) (1958) 50 Cal.2d 693 [affirming constitutionality of amended peremptory judicial disqualification statute]
6. [Solberg v. Superior Court of S.F.](#) (1977) 19 Cal.3d 182 [“strongly” disapproving of blanket challenges, but leaving “future adjustments” of CCP 170.6 to the Legislature].
7. [O.J. v. S.C.](#) (Cal. Sup Ct. docket number 287285)
8. [Government Code section 69508, subd. \(a\)](#) [“the presiding judge shall distribute the business of the court among the judges”]
9. [California Rules of Court, Rule 10.603\(b\)\(1\)](#) [presiding judge is authorized to “[a]ssign judges to departments”].
10. [Code of Civil Procedure section 170.1](#)
11. [Code of Civil Procedure section 170.3](#)
12. [Code of Civil Procedure section 231.7](#)