

(Issued: April 2, 2005)

**DISCLOSURE AND DISQUALIFICATION REQUIREMENTS FOR
JUDGES WHOSE COURTS ARE INVOLVED IN LITIGATION**

I. Questions Presented

If a Court, individual Presiding or Supervising judges, or the Court Executive Officer are involved in litigation concerning administrative matters, what are the disqualification and disclosure requirements of the judges of the Court in the following situations:

- 1) When attorneys representing the Court or parties suing the Court appear before the judges on unrelated cases;
- 2) When other members of the law firms or organizations involved in the Court's lawsuit appear before the judges on unrelated cases.

II. Relevant Law and Canons

Canon 3E(1) of the Code of Judicial Ethics requires that:

A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.

Code of Civil Procedure section 170.1(a)(6)(C) mandates disqualification of a judge if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Canon 3E(2) of the Code also requires that a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes that there is no actual basis for disqualification.

Government Code section 811.9 provides, in pertinent part, that:

The fact that a judge, subordinate judicial officer, court executive officer, trial court employee, or the court was represented or defended by the county counsel, the Attorney General, or other counsel shall not be the sole basis for a judicial determination of disqualification of a judge, subordinate judicial officer, the county counsel, the Attorney General, or other counsel in unrelated actions.

III. Discussion

A Court, its Presiding or Supervising Judges, and/or its Court Executive Officer may be involved in litigation on numerous issues such as employment disputes, contractual arrangements with the County, justice partners and other entities and other controversies. Some of these lawsuits involve solely administrative or ministerial matters. In a large Court, or one with multiple branches and locations, individual judges may be completely removed from, or even ignorant of the existence of, this litigation.

The Presiding Judge and management team, frequently the Executive Committee of the Court, direct and control the litigation and thus develop a relationship with the attorneys handling the lawsuit which would lead a reasonable person to doubt the ability to be impartial on unrelated cases. A parallel appearance problem arises involving the attorneys actually participating in representing parties suing the

Court, as they are in a direct adversarial relationship with these judges in their administrative capacities. Whether the attorneys involved are from the County Counsel's Office or a private law firm has no impact upon the above analysis.

On the other hand, absent additional circumstances, there would be no grounds upon which to question the impartiality of a judge uninvolved in the litigation should the attorneys representing the Court or parties suing the Court appear on unrelated cases. Factors to consider in determining whether disclosure of the lawsuit is mandated would include the nature of the lawsuit, the size of the court, the judge's relationship with the Presiding Judge and the management team, the degree of control the management team has over the litigation, whether the subject of the lawsuit directly involves or affects the judge and/or his or her individual court, and any other matters which would be relevant to the issue of disqualification.

IV. Answers

- 1) If a judge is participating in, or has participated in, the management or direction of the lawsuit, working with the Court's attorney and not through an intermediary, the judge should disqualify himself or herself in any unrelated matter in which the attorney representing the Court or a party suing the Court, or any member of the law firm or organization who is working on the lawsuit, appears. This disqualification persists through the duration of the lawsuit, and the circumstances must be disclosed for two years thereafter.
- 2) If a judge is participating in, or has participated in, the management or direction of the lawsuit, working with the Court's attorney and not through an intermediary, disclosure and not disqualification is sufficient when a member of the law firm or organization of the attorneys listed in (1) above, who is uninvolved in the Court's lawsuit, appears before the judge on an unrelated case.
- 3) If a judge is aware that he or she is personally named in the lawsuit in an administrative capacity, but has had no part in the management or direction thereof, and is aware of the parties and attorneys involved, the judge should disclose this fact in any unrelated matter in which the attorney representing the Court or a party suing the Court or any member of the law firm or law organization working on the lawsuit appears as attorney of record.
- 4) The judges who have no involvement in the management or direction of the lawsuit have no disqualification requirements when the attorneys from the representing or suing law firm appear on unrelated cases, and need not disclose unless the existence of the lawsuit and other circumstances would lead a reasonable person to believe that the judge would be unable to be impartial.

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