

5/16/12

Greetings to My Valued Connections! Another byte of law for your interest.

Question Presented: Can a motion to recuse (disqualify) a judge, who has made rulings in a case, under Cal. Code of Civil Procedure (CCP) 170.1 (for cause) be untimely?

Answer: not if the motion is presented to the judge at the earliest reasonable opportunity after discovery of the facts giving rise to support disqualification.

Analysis: Judges often rule against moving parties on recusal motions, which are usually based on conflict of interest or bias, improperly. Judges often think that because they have made rulings in the case that they can summarily deny the motion for recusal. This is not the law. As long as the moving party brings the disqualification motion at the earliest reasonable opportunity after the party becomes aware of disqualifying facts, the motion is proper. *North Beverly Park Homeowners Assn v. Bisno* (2nd Dist., 2007) 147 Cal.App.4th 762, 54 Cal.Rptr.3d 644, rehearing denied, review denied This is the only timeliness requirement under CCP 170.1. Thus, arguably, a party may challenge a judge during trial or after judgment is entered.

The whole purpose of disqualification statutes is to assure public confidence in the judicial system to assure a fair process to litigants.

The lesson: don't wait. If you find out facts which support a recusal, file your motion as soon as possible.

Disclaimer: The author assumes no responsibility for the applicability of this analysis to your case. Please always do your own check of this information before using.

Legal Bytes is provided as a free service by The Law Office of Alan Goldberg as a way of providing interesting analysis on various areas of law. It is based on California law unless otherwise stated. West Publishing "key notes" can help you find similar law in your state or feel free to contact my firm. This service is provided as a way for me to be actively engaged with my valuable connections on a weekly basis. You may opt out of receiving this Legal Byte by sending me an email. If you like the service please also let me know. Thank you.

THE LAW OFFICE OF ALAN GOLDBERG

By: Alan M. Goldberg

alangoldberglaw@gmail.com

Appeals, civil trials, family law, assist with trial preparation: 2nd chair, motions, research, witnesses, all aspects of trials.