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CJEO Formal Opinion No. 2015-007

[Issued January 29, 2015]

DISQUALIFICATION FOR PRIOR APPEARANCE AS A DEPUTY DISTRICT ATTORNEY IN A NONSUBSTANTIVE MATTER

I. Question Presented

The Committee on Judicial Ethics Opinions (CJEO) has been asked to provide an opinion on the following question:

> Is a judge disqualified from presiding over a criminal case if the judge appeared in that case as a deputy district attorney, but only for a brief, nonsubstantive matter such as a scheduling conference?

II. Summary of Conclusions

Trial judges have a statutory duty to hear all matters coming before them unless they are disqualified. (Code Civ. Proc., § 170).[1] A judge is disqualified to hear a matter if the judge previously "served as a lawyer in the proceeding." (§ 170.1, subd. (a)(2)(A).) Taken together, the purpose of these statutes is to promote both the public's faith in the

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

impartiality of judges and the efficient and effective administration of justice by requiring disqualification in only those circumstances where there is a reasonable doubt as to impartiality.

Where a judge has previously acted as an advocate for one party in a proceeding that later comes before that judge, the law, quite logically, presumes an impairment of impartiality. It is the committee's opinion, however, that a judge who previously appeared in a case as a deputy district attorney only in a perfunctory, nonsubstantive role, such as a brief appearance on a scheduling or uncontested matter, is not disqualified for having "served as a lawyer in the proceeding," unless the judge in some fashion actively participated in the case. To conclude otherwise would impede the administration of justice where there is no reason to doubt impartiality, contrary to the purposes of the disqualification statutes.

III. Authorities

A. Applicable Canons

Canon 3E(1): "A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law."

B. Other Authorities

California Code of Civil Procedure, sections 170, 170.1, 170.3, 170.5

Apple Inc. v. Superior Court (2013) 56 Cal.4th 128

Burden v. Snowden (1992) 2 Cal.4th 556

Holmes v. Jones (2000) 83 Cal.App.4th 882

In re Arthur S. (1991) 228 Cal.App.3d 814

In re Dannenberg (2005) 34 Cal.4th 1061

Muller v. Muller (1965) 235 Cal.App.2d 341

People v. Barrera (1990) 70 Cal.App.4th 541

People v. Bryan (1970) 3 Cal.App.3d 327

People v. King (2006) 38 Cal.4th 617

People v. Peralez (1971) 14 Cal.App.3d 368

People v. Thomas (1972) 8 Cal.3d 518

Sincavage v. Superior Court (1996) 42 Cal.App.4th 224

United Farm Workers v. Superior Court (1985) 170 Cal.App.3d 97

Rothman, California Judicial Conduct Handbook (2013 supp.) section 7.37

IV. Discussion

A. Introduction

The disqualification statutes require trial judges to hear all cases assigned to them unless they are disqualified due to, inter alia, having previously "served as a lawyer in the proceeding." (§ 170.1 subd. (a)(2)(A); see § 170.) Judges who are former deputy district attorneys sometimes face the question of whether they are duty bound to hear a case or are disqualified because they previously participated in the matter briefly and superficially (at an uncontested motion or in a scheduling conference), without gaining knowledge of the disputed facts and legal issues, and thus having no occasion to form an opinion or develop a bias about the case that would prevent them from being impartial. This question arises out of the practical realities of criminal law practice, which often involves various perfunctory motions and proceedings.[2] As a result of the high-volume

[2] These circumstances also exist in other public agencies that provide criminal law services, such as public defenders offices, so the question also arises for judges with such pre-bench criminal law experience. (See *People v. Barrera* (1990) 70 Cal.App.4th 541, 579 [nonwaivable disqualification of a commissioner who previously represented the defendant as a deputy public defender].) The committee, however, has been asked about

caseloads in many district attorneys' offices, it is not uncommon for a deputy district attorney to be handed a court file and asked to appear in a nonsubstantive matter without any need (or opportunity) to learn about the disputed facts, the legal issues or the prosecution's strategy in the case. The committee has been asked to provide guidance on whether these nonsubstantive appearances constitute "serv[ice] as a lawyer" that requires disqualification under section 170.1, subdivision (a)(2). The answer to that question requires, first, an examination and construction of the language in the disqualification statutes.

B. Statutory Language

1. Principles of statutory construction

When interpreting statutory language, """our fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.'""" (*Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135.) Because statutory language generally provides the most reliable indicator of that intent, the words of the statute are given their usual and ordinary meanings, as construed in the context of the statute as a whole. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) Additionally, statutes relating to the same subject must be harmonized, both internally and with each other, to the extent possible. (*Holmes v. Jones* (2000) 83 Cal.App.4th 882, 888.)

The plain meaning of the statutory language controls if there is no ambiguity. (*People v. King* (2006) 38 Cal.4th 617, 622.) If, however, the statute is susceptible to more than one reasonable construction, legislative history may be examined. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1081-1082.) Finally, the impact of an interpretation on public policy may also be considered, for where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. (*Ibid*.)

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the disqualification requirements of former deputy district attorneys and this opinion discusses only those factual circumstances.

Here, two statutes are relevant to our inquiry. Section 170 provides that "[a] judge has a duty" to serve unless "disqualified." Section 170.1 sets forth the grounds for disqualification. Read together, these sections are understood to mean that "[t]he duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified." (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 100.) It is in this context that the narrower question posed to the committee must be examined.

2. The disqualification requirements

Specific disqualification grounds for prior service as a lawyer are provided in section 170.1, subdivision (a)(2), as follows:

"(a) A judge shall be disqualified if any one or more of the following are true:

. . .

> "(2) (A) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for a party in the present proceeding or gave advice to a party in the present proceeding upon a matter involved in the action or proceeding.
>
> "(B) A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:
>
> > "(i) A party to the proceeding, or an officer, director, or trustee of a party, was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law.
> >
> > "(ii) A lawyer in the proceeding was associated in the private practice of law with the judge.
>
> "(C) A judge who served as a lawyer for, or officer of, a public agency that is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding."

The primary disqualifying factor in subdivision (a)(2) is where a judge "*served as a lawyer in the proceeding*." (§ 170.1, subd. (a)(2)(A), italics added.) Subdivision (a)(2)(A) also requires disqualification where, in any *other* proceeding involving the *same issues*, a judge served as a lawyer for, or gave advice to, a party in the present proceeding. (*Ibid*.) Based on the question posed, the second part of subdivision (a)(2)(A) does not apply to this analysis.[3]

Additional disqualifying factors are provided in subdivision (a)(2)(B) and (C), which deem a judge to have *served as a lawyer in the proceeding* in distinct circumstances where the judge did not *actually* "serve[] as a lawyer in the proceeding" but, because of other facts, is disqualified *as if* the judge *served as a lawyer in the proceeding*. (§ 170.1, subd. (a)(2)(B) & (C).) Subdivision (a)(2)(B) deems a judge to have *served as a lawyer in the proceeding* when a party was a client of the judge in private practice or a client of a lawyer who was in private practice with the judge, within the previous two years. Subdivision (a)(2)(C) also deems a judge to have *served as a lawyer in the proceeding* when the judge served as a lawyer for a public agency party and the judge advised or represented the public agency concerning the factual or legal issues

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[3] *Sincavage v. Superior Court* (1996) 42 Cal.App.4th 224 (*Sincavage*) provides an example of facts that might give rise to disqualification based on the judge's service as a lawyer in another proceeding involving the same issues. In *Sincavage*, the trial judge had conducted a preliminary examination as a deputy district attorney in the case involving the defendant's prior convictions, which were alleged as strikes in the proceeding before the judge. The *Sincavage* court, however, did not reach the issue of whether the other proceedings on the defendant's priors involved the same issues under section 170.1, subdivision (a)(2)(A). Instead, the court concluded the judge was disqualified under section 170.1, subdivision (a)(6)(A)(iii), based on two facts: (1) the judge "was active in the prosecution of the priors," and (2) the judge had stated on the record, before her appearance in the preliminary examination was discovered, that she would "automatically recuse herself" if she had actively participated in the defendant's priors, but then failed to do so. The *Sincavage* court found, "A doubt as to impartiality and fairness arises when the judge changes her mind upon learning the very fact which she earlier said would disqualify her." (*Id.* at p. 230.)

in the present proceeding.[4] In both circumstances, a judge who did not appear in the present court proceeding is disqualified *as if* he or she *served as a lawyer in the proceeding*.

Thus, the circumstances specified in subdivisions (a)(2)(B) and (C) also do not apply to the narrow question posed (disqualification for previous nonsubstantive appearance in the same proceeding), but they do provide a statutory context within which to discern the intended meaning of the term "served as a lawyer in the proceedings."

3. The meaning of "served as a lawyer"

The phrase "served as a lawyer in the proceedings" can be—and has been—construed to mean that *any* appearance of any type by a lawyer in a proceeding would subsequently disqualify the judge who had made that appearance "regardless of how significant the judge's role was at the time." (Rothman, Cal. Judicial Conduct Handbook (2013 supp.) § 7.37, p. 12.) Another view, however, is that the Legislature did not intend to have the question of judicial disqualification for prior service as a lawyer in the proceeding turn on "an inconsequential formality." (*In re Arthur S.* (1991) 228 Cal.App.3d 814, 820 (*Arthur S.*).) Although the court in *Arthur S.* decided that successive juvenile proceedings filed under the same case number were separate proceedings and ultimately determined disqualification based on the lack of similar issues, the court's rationale suggests that the statutory term "served as a lawyer in the proceeding*"* is susceptible to more than one reasonable construction.

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[4] The use of the words "represented or advised" distinguishes the service in section 170.1, subdivision (a)(2)(C) from service as a lawyer in the proceedings in subdivision (a)(2)(A). "Proceedings" are statutorily defined as "the action, case, cause, motion, or special proceeding to be tried or heard by the judge." (§ 170.5, subd. (f).) Thus, subdivision (a)(2)(C) applies to lawyers who represent and advise public agencies in forums other than court proceedings, such as administrative and agency hearings, and who provide to the agencies legal advice generally. As an example, a former deputy county counsel who represented the county in annexation hearings before a local agency formation commission (LAFCO) is disqualified under subdivision (a)(2)(C) from presiding as a judge over a court proceeding challenging some aspect of that LAFCO annexation.

Thus, we look to the legislative history to assist in determining whether the legislature intended that a brief, nonsubstantive appearance in the same proceeding would *require* judicial disqualification.

4. Legislative history

The most significant amendments to the disqualification statutes occurred in 1984 and 2005. In 1984, the Legislature sought to clarify the requirements for disqualification, which had been amended more than 20 times since 1927 and had become 'murky.' (Sen. Keene, sponsor of Sen. Bill No. 1633 (1983-1984 Reg. Sess.), letter to Governor, Sept. 6, 1984, requesting approval.) Former section 170 was replaced by former sections 170–170.5. (Stats. 1984, ch. 1555, § 5, p. 5479.) The Legislature made two key changes: (1) it enacted the provision that a judge has a duty to serve where not disqualified, and (2) it replaced the subjective standard of actual bias with an objective standard of reasonable doubt as to impartiality.[5] In addition, disqualification of a judge who had been "attorney or counsel for any party" in "the action or proceeding" under former section 170, subdivision (a)(4) (as amended by Stats. 1982, ch. 1644, § 1, p. 6678) was replaced by section 170.1, subdivision (a)(2), which requires disqualification of a judge who had previously "served as a lawyer in the proceedings." While the legislative history makes no mention of reasons for these specific changes, it does show that the amendments, overall, were intended to restate the standards for judicial recusal and require disqualification "where it is not in the best interest of the administration of justice; where there is a question of the judge's ability to be impartial; or where a third person might reasonably question whether there is an appearance of partiality." (Jud. Council of Cal.,

[5] Section 170, subdivision (a)(5) was replaced in 1984 by section 170.1, former subdivision (a)(6)(C) (now numbered as § 170.1, subd. (a)(6)(A)(iii)), which requires disqualification where "a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (See Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1633 (1983-1984 Reg. Sess.), as amended Mar. 19, 1984, p. 3.) The objective reasonable doubt standard is discussed in IV.B.(5), *post*, at pages 10-15.

letter to Assem. Com. On Judiciary re Sen. Bill No. 1633 (1983-1984 Reg. Sess.), Jun. 13, 1984, supporting passage.)

In 2005, the Legislature again amended section 170.1, primarily to clarify the grounds for disqualification of judges considering prospective employment as an alternative dispute resolution (ADR) neutral under section 170.1, subdivision (a)(8). At the same time, technical changes were made to separate the section 170.1, subdivision (a)(2) disqualification factors into subdivision (a)(2)(A)-(C), although no substantive changes were made to these relevant provisions. The legislative history shows that section 170.1. subdivision (a)(8) was amended because the provision had been strictly interpreted to require disqualification if a judge had any discussions with an ADR provider, even when those discussions were unsolicited or entirely superficial. Concern was expressed that recusal could be required when a judge merely appointed an ADR neutral in a proceeding without discussing or intending prospective employment. The 2005 amendment clarified that disqualification was required only where a judge 'has meaningfully participated' in prospective employment discussions and had a specified conflict of interest with an ADR provider. (Sen. Rules Com., reading analysis of Assem. Bill No. 1322 (2005-2006 Reg. Sess.), July 14, 2005, p. 4.) The express intent of the Legislature in enacting this amendment was to "'prevent the wholesale disqualification of civil judges'" (id. at p. 3) which could "'severely hamper a trial court's ability to manage its civil litigation calendar.'" (Sen. Com. On Judiciary, analysis of Assem. Bill No. 1322 (2005-2006 Reg. Sess.) for hearing on July 12, 2005, p. 70). As the author and sponsors of the legislation noted, "judges whose authority rests fundamentally on the well-deserved public esteem for the integrity of the judiciary would be prudent to avoid the potential perception of impropriety . . . ." (Assem. Com. on Judiciary, analysis of Assem. Bill No. 1322 (2005-2006 Reg. Sess.) as amended Mar. 29, 2005, p. 4.)

The legislative histories of the 1984 and 2005 enactments show two clear purposes for the disqualification statutes as a whole: one is to promote trust by precluding judges from presiding in those circumstances where there is a reasonable doubt as to impartiality, and the other is to further the administration of justice by requiring judges to

preside where there is no reasonable doubt as to impartiality. In view of these dual purposes, it appears that the term "served as a lawyer in the proceedings*"* in section 170.1, subdivision (a)(2) is intended to require disqualification where the judge performed any legal services in the case that could raise a reasonable doubt about the judge's impartiality. What, then, are the types of prior legal services that implicate possible bias or partiality? The courts in California and other jurisdictions provide guidance in answering this question.

5. Reasonable doubt as to impartiality

While no officially reported California case directly decides whether or not a nonsubstantive appearance in the same proceeding is disqualifying, courts that apply the reasonable doubt standard to disqualification decisions in similar circumstances are instructive.[6]

For example, in the circumstances of a prior appearance on a substantive matter in the same proceeding, disqualification is clearly required. (*People v. Crappa* (1925) 73 Cal.App. 260, 261 [judge's revocation of probation and sentencing reversed where the judge previously appeared as a deputy district attorney at the defendant's arraignment and probation hearings in the same matter].) Disqualification is similarly required for substantive involvement in another proceeding related to the matter before the judge. (*Sincavage, supra*, 42 Cal.App.4th at p. 230 [disqualification based on judge's appearance as a deputy district attorney at the defendant's preliminary hearing in a prior conviction which was charged as a prior in the matter pending before the judge].)

Significantly, the court in *Sincavage* found that the judge's prior appearance at a preliminary hearing led to the conclusion that "a person knowing these facts would

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[6] Many of the California cases addressing disqualification for prior service as a lawyer are decided on procedural grounds such as waiver and timeliness, which are not directly relevant to this advisory opinion. (See *People v. Barrera, supra*, 70 Cal.App.4th at p. 579; *Sincavage, supra*, 42 Cal.App.4th at pp. 230-232; *Muller v. Muller* (1965) 235 Cal.App.2d 341, 346-348.) However, insight may be gleaned where reasonable doubt is addressed in passing.

entertain doubt that [the] Judge . . . would be impartial in ruling on matters involving the [defendant's] priors." (*Sincavage, supra*, 42 Cal.App.4th at p. 230.) One of the facts the *Sincavage* court relied on in reaching this conclusion was that the judge had been "active in the prosecution of the priors." (*Ibid.*)

Conversely, the absence of active participation is a deciding factor for several courts that have ruled against disqualification. In *People v. Peralez* (1971) 14 Cal.App.3d 368, the judge had been the district attorney of the county at the time of the defendant's prior conviction. The defendant argued on appeal that the "mere presence of the judge's name on the conviction record" was grounds for reversal based on bias. (*Id.*, at p. 375.) The court rejected the appellant's contention that a judge is disqualified if he was previously "the least bit associated with the prior conviction." (*Ibid.*) Rather, the court found that it was not reasonable to conclude that the judge had an obligation to disqualify "when there is no indication of any actual participation in the previous action." (*Id.*, at p. 376.)

Nor is disqualification required for merely having been an assistant district attorney without any actual participation in the defendant's prosecution. (*People v. Thomas* (1972) 8 Cal.3d 518, 521.) In *Thomas*, the court found that the disqualification statute should be "liberally construed with a view to effect its objects and to promote justice" and that the object of the statute "'is not only to guard jealously the actual impartiality of the judge but also to insure public confidence.'" (*Id.*, at p. 520.) The court concluded that it would be unreasonable to assume a trial judge's prior representation of the People in other matters would impair his impartiality or undermine public confidence. (*Ibid.*)

The kinds of active participation that would raise a reasonable doubt as to impartiality are specifically addressed in *People v. Bryan* (1970) 3 Cal.App.3d 327 (*Bryan*). In *Bryan*, a judge pro tem was not required to disqualify because of a prior appearance as a deputy district attorney at the defendant's sentencing on a prior conviction. (*Bryan, supra*, 3 Cal.App.3d at p. 342.) The record disclosed that the judge had not prosecuted the case, and had not participated in post-conviction proceedings or in

an appeal that affirmed the judgment. The judge had merely appeared at a sentencing hearing following the appeal where the originally imposed sentence was reaffirmed. It was noted by the court that the record showed the judge "was simply in the courtroom to take care of the many matters calendared on that date and took no part in the reaffirmance of a sentence originally pronounced." (*Ibid*.) The judge stated that he knew nothing about the case at the time of this appearance. The court found that these circumstances did not merit disqualification under the statute. (*Ibid*.)

The conclusion we draw from these California cases is that disqualifying *service as a lawyer in the proceeding* requires at least a modicum of active participation. It would be unreasonable for the law to presume that a judge's prior appearance at a perfunctory, nonsubstantive hearing—essentially carrying out an administrative task—would compromise the judge's impartiality. Where the appearance was so brief and inconsequential that the judge gained no knowledge of the disputed facts, the legal issues, or the prosecution's strategy, a rational person aware of the circumstances would not have reason to believe that any bias was formed. If, on the other hand, the judge actively participated in any way, for example, by reviewing the facts and arguing the merits of even a minor disputed matter, a doubt as to the judge's impartiality would be reasonable.

A number of other jurisdictions are in accord regarding the requirement of active participation.[7] We note that some jurisdictions, however, follow the view that any appearance requires disqualification.[8] In those jurisdictions that recognize active

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[7] (See *Laird v. Tatum* (1972) 409 U.S. 824, 828 [Supreme Court justice who was formerly a Justice Department official is disqualified if he either signs a pleading or brief or if he "actively participated" in any case even though he did not sign a pleading or brief]; *U.S. v. Ruzzano* (7th Cir. 2001) 247 F.3d 688, 695 [some level of actual participation in the case by the judge while serving as an assistant United States attorney is required to trigger disqualification, on the basis that he or she participated as counsel, adviser, or material witness concerning the proceeding, or expressed an opinion concerning merits of case in controversy].)

[8] (See *Com. v. Young* (1970) 439 Pa. 498, 500 [disqualification is required for judges who, prior to ascending the bench, had association with either the prosecution or the defense in the trial of the case]; *Ex parte Sanders* (1995) 659 So.2d 1036, 1037-1039

participation as a deciding factor, some examples of active participation found to be disqualifying include: (1) prior involvement in the investigation of the case; (2) presentation of the case to the grand jury; (3) prosecution of the defendant's indictment; (4) active involvement in obtaining the underlying conviction; and (5) a review of the case file and expressing a written opinion in the matter.[9] Examples of prior prosecutorial service found not to be active participation and therefore not disqualifying include: (1) a stamped signature on a notice without participation in the grand jury or trial; (2) no examination of the file, participation in the investigation, interview of witnesses, or preparation of legal research; (3) a single appearance to request a continuance in an underlying matter; and (4) assigning the case to another attorney and agreeing with a defense request to expedite the indictment.[10] These examples of the types of active

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[disqualification of a former district attorney is required where, at one point, the judge had been attorney of record for the cases against the defendant].)

[9] (See *United States v. Pepper & Potter, Inc.* (1988) 677 F.Supp. 123, 125-126 [a judge's prior involvement in the investigation of defendant's case, which consisted of reviewing, signing, and submitting an application to the court for the empanelment of a grand jury, was "not merely of a *pro forma* nature" and would prompt an objective observer to question the judge's impartiality]; *State v. Tucker* (1993) 254 N.J.Super. 549, 555 [the impartiality of a judge who, as prosecutor, presented the defendant's case to the grand jury, might reasonably be questioned]; *Jenkins v. State* (1990) 570 So.2d 1191, 1193 [a reasonable person knowing that the judge acted as prosecutor during defendant's indictment would question impartiality]; *Smith v. State* (2011) 357 S.W.3d 322, 342 [a person of ordinary prudence would have a reasonable basis for questioning judge's impartiality where the judge, as prosecutor, was actively involved in prosecuting defendant in related matters and had been in possession of critical evidence used to convict the defendant in the matter before the judge]; *Lee v. State* (1977) 555 S.W.2d 121, 125 [a trial judge who, while district attorney staff, reviewed the case and sent a letter to defense counsel containing opinions about the defendant's record and a recommended sentence, was disqualified from presiding].)

[10] (See *Gamez v. State* (1987) 737 S.W.2d 315, 318-320 [a judge is not disqualified simply because his stamped signature appeared on a notice, but where he did not participate in the grand jury or trial, conduct an investigation, interview witnesses, prepare legal research, or examine the file]; *Mort. Elec. Registr'n Sys. v. Book* (2006) 97 Conn.App. 822, 830-831 [a judge's impartiality could not reasonably be questioned on the basis of his prior role as a prosecutor in another matter in which he appeared only

participation that may or may not be disqualifying are in line with *Bryan, supra*, 3 Cal.App.3d at page 343, and with our view of the intended meaning of *service as a lawyer in the proceedings*.

Thus, it is the committee's opinion that a judge who previously appeared in a case as a deputy district attorney on a nonsubstantive matter, without any active participation in the prosecution, is not disqualified for having served as a lawyer in the proceeding. To conclude otherwise would impede the administration of justice where there is no perception of partiality, contrary to the purpose of the disqualification statutes.

VI. Conclusions

It is the committee's opinion that the term "served as lawyer in the proceeding" in section 170.1, subdivision (a)(2)(A), is intended to include any active participation as an attorney for a party that could create a reasonable doubt as to impartiality. It is also the committee's opinion that active participation does not include a brief appearance on a scheduling or uncontested matter where special knowledge about the case is not gained and hence no opinion or bias about the matter could be formed. These facts would not create a reasonable doubt as to the impartiality of a judge who had made this kind of nonsubstantive appearance. A conclusion that such an appearance would *require* the disqualification of a judge would impede the efficient and effective administration of justice, contrary to the purpose of the disqualification statutes, by removing a judge where there is no reasonable perception of partiality.

This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based

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once and performed only a limited function, merely requesting a continuance]; *People v. Del Vecchio* (1989) 129 Ill.2d 265, 277-278 [disqualification deemed unnecessary where the judge, as a prosecutor, played only a limited role in the defendant's prosecution by assigning the case to another attorney and by agreeing with a defense request to expedite the indictment].)

on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)).