

(2) For the purposes of this subdivision, if (A) a proceeding is filed in a single judge court or has been assigned to a single judge for comprehensive disposition, and (B) the proceeding has been set for trial or hearing 30 or more days in advance before a judge whose name was known at the time, the trial or hearing shall be deemed to have commenced 10 days prior to the date scheduled for trial or hearing as to any grounds for disqualification known before that time.

(3) A party may file no more than one statement of disqualification against a judge unless facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed.

(d) Except as provided in this section, a disqualified judge shall have no power to act in any proceeding after his or her disqualification or after the filing of a statement of disqualification until the question of his or her disqualification has been determined.

170.5. For the purposes of Sections 170 to 170.5, inclusive, the following definitions apply:

(a) "Judge" means judges of the superior courts, and court commissioners and referees.

(b) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(c) "Officer of a public agency" does not include a Member of the Legislature or a state or local agency official acting in a legislative capacity.

(d) The third degree of relationship shall be calculated according to the civil law system.

(e) "Private practice of law" includes a fee for service, retainer, or salaried representation of private clients or public agencies, but excludes lawyers as full-time employees of public agencies or lawyers working exclusively for legal aid offices, public defender offices, or similar nonprofit entities whose clientele is by law restricted to the indigent.

(f) "Proceeding" means the action, case, cause, motion, or special proceeding to be tried or heard by the judge.

(g) "Fiduciary" includes any executor, trustee, guardian, or administrator.

170.6. (a) (1) No judge, court commissioner, or referee of any superior court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no opening statement by counsel for plaintiff, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding, or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (3), the party who filed the appeal that

resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

State of California,) PEREMPTORY CHALLENGE
County of _____) ss.

_____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That _____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this
_____ day of _____, 20__.

(Clerk or notary public or other
officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.

170.7. Section 170.6 does not apply to a judge designated or assigned to serve on the appellate division of a superior court in the judge's capacity as a judge of that division.

170.8. When there is no judge of a court qualified to hear an action or proceeding, the clerk shall forthwith notify the Chairman of the Judicial Council of that fact. The judge assigned by the Chairman of the Judicial Council shall hear the action or proceeding at the time fixed therefor or, if no time has been fixed or good cause appears for changing the time theretofore fixed, the judge shall fix a time for hearing in accordance with law and rules and hear the action or proceeding at the time so fixed.

170.9. (a) No judge shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the California Code of Judicial Ethics adopted by the California Supreme Court or any other provision of law.

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by subdivision (e).

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(3) A gift, bequest, favor, or loan from any person whose preexisting relationship with a judge would prevent the judge from hearing a case involving that person, under the Code of Judicial Ethics adopted by the California Supreme Court.

(c) For purposes of this section, "judge" means judges of the superior courts, and justices of the courts of appeal or the Supreme Court.

(d) The gift limitation amounts in this section shall be adjusted biennially by the Commission on Judicial Performance to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(e) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a judicial or governmental purpose, or to an issue of state, national, or international public policy, is not prohibited or limited by this section if any of the following apply:

(1) The travel is in connection with a speech, practice demonstration, or group or panel discussion given or participated in by the judge, the lodging and subsistence expenses are limited to the

day immediately preceding, the day of, and the day immediately following the speech, demonstration, or discussion, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

For purposes of this section, "foreign bar association" means an association of attorneys located outside the United States (A) that performs functions substantially equivalent to those performed by state or local bar associations in this state and (B) that permits membership by attorneys in that country representing various legal specialties and does not limit membership to attorneys generally representing one side or another in litigation. "International service organization" means a bona fide international service organization of which the judge is a member. A judge who accepts travel payments from an international service organization pursuant to this subdivision shall not preside over or participate in decisions affecting that organization, its state or local chapters, or its local members.

(3) The travel is provided by a state or local bar association or judges professional association in connection with testimony before a governmental body or attendance at any professional function hosted by the bar association or judges professional association, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the professional function.

(f) Payments, advances, and reimbursements for travel not described in subdivision (e) are subject to the limit in subdivision (a).

(g) No judge shall accept any honorarium.

(h) "Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal or like gathering.

(i) "Honorarium" does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received pursuant to Section 94.5 of the Penal Code for performance of a marriage.

For purposes of this section, "teaching" shall include presentations to impart educational information to lawyers in events qualifying for credit under Mandatory Continuing Legal Education, to students in bona fide educational institutions, and to associations or groups of judges.

(j) Subdivision (a) and (e) shall apply to all payments, advances, reimbursements for travel and related lodging and subsistence.

(k) This section does not apply to any honorarium that is not used and, within 30 days after receipt, is either returned to the donor or delivered to the Controller for deposit in the General Fund without being claimed as a deduction from income for tax purposes.

(l) "Gift" means any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or

discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

However, the term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars, periodicals, cassettes and discs, or free or reduced-price admission, tuition, or registration, for informational conferences or seminars. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(3) Gifts from a judge's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(7) Admission to events hosted by state or local bar associations or judges' professional associations, and provision of related food and beverages at such events, when attendance does not require "travel" as described in paragraph (3) of subdivision (e).

(m) The Commission on Judicial Performance shall enforce the prohibitions of this section.

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REQUEST FOR VOLUNTARY RECUSAL

TO: Hon. Janis Sammartino, Judge
Superior Court of the State of California
Department 71, San Diego County

FROM: Paul Andrew Mitchell, Plaintiff
Mitchell v. AOL Time Warner, Inc. et al.
Superior Court docket #GIC807057

DATE: January 31, 2004 A.D.

SUBJECT: grounds for voluntary disqualification pursuant to
Code of Civil Procedure ("CCC"), sections 170-170.9

Greetings Judge Sammartino:

In the above entitled matter, I hereby request that you voluntarily disqualify yourself from presiding any further on this case, for all of the following reasons:

- (1) you appear to have acquired personal knowledge of disputed evidentiary facts concerning the proceeding;
- (2) there is substantial doubt as to your capacity to remain impartial;
- (3) any person aware of the certified evidence now before the Court might reasonably entertain doubt that you are able to be impartial; and,
- (4) you appear to have a personal bias or prejudice against me in my capacity as the sole Plaintiff now proceeding *In Propria Persona* under authority of 18 U.S.C. 1964.

To expedite matters now, I have attached a recently updated Table of Contents ("TOC") for case #GIC807057, as archived in electronic form at the Supreme Law Library on the Internet. The most recent entries in that Table of Contents now render this request timely e.g. see the LETTER from the Georgia Governor's Office (TOC entry 61).

To comply with this request, pursuant to CCC section 170.3 you must notify the presiding judge of your recusal and you shall not further participate in this case, except as provided in CCC section 170.4.

If I do not receive a copy of said notice to the presiding judge within ten (10) calendar days of your receipt of this request, please be advised of my intent to invoke CCC section 170.3(c)(1) i.e. by filing a written verified statement objecting to any further proceedings before you, and setting forth the verified facts constituting the grounds for your disqualification.

For the record, your 10-day deadline for voluntarily recusing yourself is 5:00 p.m. on Friday, February 11, 2005 A.D.

Thank you, Judge Sammartino, for your timely professional cooperation.

1 Sincerely yours,
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6 Paul Andrew Mitchell, Plaintiff
7 Mitchell v. AOL Time Warner, Inc. et al.
8 Superior Court docket #GIC807057
9

10 copy: Clerk of Court
11 Presiding Judge ✓
12

13 attachments

Supreme Law Library : Court Cases

Paul Andrew Mitchell v. AOL Time Warner, Inc. *et al.*

Superior Court of California
Docket #G1C807057

[Note: Small numbers indicate number of bytes in ASCII portion of files.]

Table of Contents

.doc files are Microsoft WORD 2000: use **View | Print Layout** in MSIE Version: 6.0.2600 +

1. 86641 VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES FROM RACKETEERING, CONSPIRACY TO ENGAGE IN A PATTERN OF RACKETEERING ACTIVITY, AND RELATED CLAIMS: JURY DEMANDED (March 12, 2003 *A.D.*) (.doc)
2. 7730 TRANSMITTAL LETTER (March 12, 2003 *A.D.*) (.doc)
3. DOCKET FORMS (March 12, 2003 *A.D.*)
4. 22155 NOTICE AND ACKNOWLEDGMENT (March 12, 2003 *A.D.*) (.doc)
5. SUMMONS (April 15, 2003 *A.D.*)
6. 7338 MEMO to Clerk of Court (April 30, 2003 *A.D.*) (.doc)
7. 42262 MOTION FOR PRELIMINARY INJUNCTION BARRING REMOVAL INTO FEDERAL COURT (April 30, 2003 *A.D.*) (.doc)
8. 18997 FIRST SUPPLEMENT TO MOTION TO BAR REMOVAL (April 30, 2003 *A.D.*) (.doc)
9. 9627 MEMO to Clerk of Court (May 7, 2003 *A.D.*) (.doc)
10. 137198 FIRST AMENDED NOTICE OF HEARING ON MOTION TO BAR REMOVAL (May 9, 2003 *A.D.*) (.doc)
11. 139055 SECOND SUPPLEMENT TO MOTION TO BAR REMOVAL (May 26, 2003 *A.D.*) (.doc)

12. ¹³⁶⁴⁶ PLAINTIFF'S DEMAND FOR RULING ON MOTION FOR PRELIMINARY INJUNCTION BARRING REMOVAL INTO FEDERAL COURT (June 13, 2003 *A.D.*) (.doc)
13. ¹¹⁰⁰³ FINAL NOTICE AND DEMAND FOR CREDENTIALS REQUIRED BY LAW to Irma E. Gonzalez (June 30, 2003 *A.D.*) (.doc)
14. ¹⁰⁵⁵⁴ NOTICE OF DEFAULT BY AFFIDAVIT to Irma E. Gonzalez (July 17, 2003 *A.D.*) (.doc)
15. ¹¹¹⁷⁶³ PLAINTIFF'S REPLY TO ANSWER OF DEFENDANT MSEN, INC. (July 21, 2003 *A.D.*) (.doc)
16. ²⁶⁸²⁶¹ PLAINTIFF'S FIRST VERIFIED CRIMINAL COMPLAINT ON INFORMATION (Sept. 18, 2003 *A.D.*) (.doc)
17. ¹⁵⁶⁹² NOTICE AND DEMAND TO DOCKET PLAINTIFF'S FIRST VERIFIED CRIMINAL COMPLAINT (Oct. 1, 2003 *A.D.*) (.doc)
18. ¹⁰⁰⁶³ NOTICE AND DEMAND FOR EXHIBITION OF OATH OF OFFICE to Peter Eng, The State Bar of California (Nov. 16, 2003 *A.D.*) (.doc)
19. ⁷²³⁴ MEMO to Clerk of California Supreme Court (Nov. 16, 2003 *A.D.*) (.doc)
20. ⁶⁹⁵² NOTICE OF CURRENT MAILING LOCATION AND DEMAND FOR PROPER DELIVERY AND FORWARDING (Nov. 18, 2003 *A.D.*) (.doc)
21. SUBPOENA IN A CIVIL CASE to The State Bar of California (Dec. 1, 2003 *A.D.*)
22. LETTER from The State Bar of California (annotated REFUSED FOR CAUSES) (Dec. 15, 2003 *A.D.*)
23. ²⁴⁰³¹ NOTICE OF REFUSAL FOR CAUSES, BY AFFIDAVIT to The State Bar of California (Dec. 18, 2003 *A.D.*) (.doc)
24. ¹⁰⁷⁸⁴ NOTICE AND DEMAND FOR EXHIBITION OF OATH OF OFFICE to Jay M. Goldman, The State Bar of California (Dec. 18, 2003 *A.D.*) (.doc)
25. ⁸⁸⁴² NOTICE OF CRIMINAL INVESTIGATION to Department 71, Superior Court of California (March 30, 2004 *A.D.*) (.doc)
26. ²⁵⁷²⁷² PLAINTIFF'S SECOND VERIFIED CRIMINAL COMPLAINT ON INFORMATION (March 31, 2004 *A.D.*) (.doc)
27. LETTER from THE OFFICE OF COURT COUNSEL, Superior Court of California (annotated REFUSED for causes) (April 7, 2004 *A.D.*)
28. ³⁵⁴⁵³ MEMO to County District Attorney (April 9, 2004 *A.D.*) (.doc)
29. ¹⁸³⁸⁴ NOTICE AND DEMAND FOR IDENTITY OF AUTHOR to Office of the Presiding Judge (April 12, 2004 *A.D.*) (.doc)
30. LETTER from State of California, Department of Justice (April 12, 2004 *A.D.*)
31. ¹⁵⁶⁸⁷ REPLY to State of California, Department of Justice (April 14, 2004 *A.D.*)

32. LETTER from THE OFFICE OF COURT COUNSEL, Superior Court of California (annotated REFUSED for causes) (April 14, 2004 *A.D.*)
33. 12100 FORMAL NOTICE OF CRIMINAL INVESTIGATION AND MIRANDA WARNING to the Office of the Presiding Judge (April 21, 2004 *A.D.*) (.doc)
34. LETTER from Grand Jury Foreman (April 26, 2004 *A.D.*)
35. LETTER from Grand Jury Foreman (April 30, 2004 *A.D.*)
36. 42660 MEMO to Grand Jury Foreman (May 3, 2004 *A.D.*) (.doc)
37. 15178 REQUEST FOR RECONSIDERATION to Grand Jury Foreman (May 4, 2004 *A.D.*) (.doc)
38. 7732 REQUEST FOR POSITIVE IDENTIFICATION to Grand Jury Foreman (May 4, 2004 *A.D.*) (.doc)
39. 16669 NOTICE AND DEMAND FOR EXHIBITION OF MISSING CREDENTIALS to Office of the Presiding Judge (May 17, 2004 *A.D.*) (.doc)
40. 8173 CITIZEN'S ARREST WARRANT *in re:* Dale A. Drozd (June 17, 2004 *A.D.*) (.doc)
41. 17709 NOTICE OF INTENT TO SUE to Grand Jury Foreman (June 18, 2004 *A.D.*) (.doc)
42. 8720 NOTICE OF FRAUD to Grand Jury Foreman (June 19, 2004 *A.D.*) (.doc)
43. 8930 MEMO to County Sheriff Sgt. Martinez (June 19, 2004 *A.D.*) (.doc)
44. 16563 FORMAL NOTICE OF CLASS DISCRIMINATION IN GRAND JUROR ELIGIBILITY STATUTE to Office of Jury Commissioner (June 19, 2004 *A.D.*) (.doc)
45. 10397 TRANSMITTAL to County District Attorney (June 24, 2004 *A.D.*) (.doc)
46. 8136 REQUEST FOR SURRENDER OF DOCUMENTS to Office of District Attorney (June 24, 2004 *A.D.*) (.doc)
47. 7398 REQUEST FOR POSITIVE IDENTIFICATION to Thomas Eamon McCarthy, Jr. (July 4, 2004 *A.D.*) (.doc)
48. 12874 NOTICE AND DEMAND FOR SURRENDER AND RETURN OF ENTIRE DOCKET FILE to Dale A. Drozd (July 4, 2004 *A.D.*) (.doc)
49. 7300 CITIZEN'S ARREST WARRANT *in re:* William B. Shubb (July 4, 2004 *A.D.*) (.doc)
50. 7130 CITIZEN'S ARREST WARRANT *in re:* Stephen S. Trott (July 4, 2004 *A.D.*) (.doc)
51. 7198 CITIZEN'S ARREST WARRANT *in re:* Irma E. Gonzalez (July 4, 2004 *A.D.*) (.doc)
52. 12874 NOTICE OF REFUSAL FOR CAUSES to Federal District Clerk (July 23, 2004 *A.D.*) (.doc)
53. 6730 CITIZEN'S ARREST WARRANT *in re:* Morrison C. England (Aug. 4, 2004

A.D.) (.doc)

54. 6709 CITIZEN'S ARREST WARRANT *in re*: Jack L. Wagner (Aug. 4, 2004 *A.D.*) (.doc)
55. 17411 FINAL NOTICE AND DEMAND FOR EXHIBITION OF MISSING CREDENTIALS to John S. Einhorn (Aug. 25, 2004 *A.D.*) (.doc)
56. 17440 FINAL NOTICE AND DEMAND FOR EXHIBITION OF MISSING CREDENTIALS to Janis Sammartino (Aug. 25, 2004 *A.D.*) (.doc)
57. 7601 NOTICE AND DEMAND FOR RETURN OF U.S. MAIL to the Office of Jury Commissioner (Oct. 21, 2004 *A.D.*) (.doc)
58. 7570 STATUS REQUEST to County District Attorney (Oct. 21, 2004 *A.D.*) (.doc)
59. LETTER from Oregon Attorney General's Office (annotated REFUSED for causes) (Nov. 1, 2004 *A.D.*)
60. 18938 NOTICES OF JUDICIAL DEFAULT (Nov. 26, 2004 *A.D.*) (.doc)
61. LETTER from Georgia Governor's Office (Dec. 6, 2004 *A.D.*)
62. 13809 MEMO to Georgia Governor's Office (Dec. 9, 2004 *A.D.*) (.doc)
63. 8447 REQUEST FOR CERTIFIED COPIES OF OATHS to California Secretary of State (Dec. 20, 2004 *A.D.*) (.doc)
64. LETTER from Oregon Attorney General's Office (annotated REFUSED for causes) (Dec. 23, 2004 *A.D.*)
65. 16981 MEMO to Chief of Investigations, Office of District Attorney (Jan. 3, 2005 *A.D.*) (.doc)
66. CERTIFIED OATH OF OFFICE of John S. Einhorn (Jan. 7, 2005 *A.D.*)
67. CERTIFIED OATH OF OFFICE of Janis Sammartino (Jan. 7, 2005 *A.D.*)
68. 18655 STATUS MEMO to Oregon Attorney General's Office (Jan. 14, 2005 *A.D.*) (.doc)
69. 7839 LIST OF NOTICES AND DEMANDS FOR MISSING CREDENTIALS (Jan. 28, 2005 *A.D.*) (.doc)
70. 34645 LIST OF FINAL NOTICES AND DEMANDS FOR MISSING CREDENTIALS (Jan. 28, 2005 *A.D.*) (.doc)
71. 10909 LIST OF CITIZEN'S ARREST WARRANTS (Jan. 29, 2005 *A.D.*) (.doc)

Return to Table of Contents for

Supreme Law Library: Court Cases

[\[Home\]](#) [\[Write Us\]](#) [\[Library\]](#) [\[School\]](#) [\[Forum\]](#) [\[Subscribe\]](#) [\[Donate\]](#)

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[Note: Small numbers indicate number of binary bytes in .gif files.]

Table of Contents

.gif files are Graphics Interchange Format: use any graphics viewer, e.g. MS Photo Editor
.doc files are Microsoft WORD 2002: use **View** | **Print Layout** in MSIE Version: 6.0.2600 +

1. [Sample Folder with Scanned Forms](#)
2. 10559 [Authorities in re: Presidential Commissions \(.doc\)](#)
3. 10065 [Statutes Defining Legal Custodian of Federal Judges' Oaths of Office](#)
4. 133410 [Sample Form 61 Appointment Affidavit](#)
5. 145099 [Sample Presidential Commission](#)
6. 43819 [Sample Consent by United States Senate](#)
7. 104118 [Sample Oath of Office for United States Judges](#)
8. 7396 [FOIA Request for Supreme Court Commissions and Reply \(11/21/2003\)](#)
9. 5437 [Ninth Circuit "Robes" as of July 1, 2003 A.D.](#)
10. 32911 [MOTION FOR MANDATORY JUDICIAL NOTICE, BY
AFFIDAVIT of Evidence against Stephen S. Trott \(2/23/2003\) \(.doc\)](#)
11. 268261 [CRIMINAL COMPLAINT against Stephen S. Trott \(9/18/2003\) \(.doc\)](#)
12. [Folder of Evidence against Stephen S. Trott: Impersonating an Article
III Judge](#)
13. 159890 [28 U.S.C. 372\(c\) Complaint against William B. Shubb,
USDC/Sacramento](#)
14. 268261 [CRIMINAL COMPLAINT against William B. Shubb \(9/18/2003\) \(.doc\)](#)

15. Folder of Evidence against William B. Shubb: Impersonating an Article III Judge
16. 91568 28 U.S.C. 372(c) Complaint against Dale A. Drozd, USDC/Sacramento
17. 268261 CRIMINAL COMPLAINT against Dale A. Drozd (9/18/2003) (.doc)
18. Folder of Evidence against Dale A. Drozd: Impersonating a U.S. Magistrate
19. 9806 Sample FOIA Request for Presidential Commission (cf. FOIA)
20. 6884 Sample FOIA Appeal for Presidential Commission (cf. FOIA)
21. 38547 Sample FOIA Request for Appointment Affidavit, Oath of Office and Senate Confirmation (cf. FOIA)
22. 8123 Sample FOIA Appeal for Appointment Affidavit, Oath of Office and Senate Confirmation (cf. FOIA)
23. 11003 Sample Final Notice and Demand for Credentials Required by Law
24. 10554 Sample Notice of Default by Affidavit, 28 U.S.C. 1746(1)
25. 6970 Sample Miranda Warning, Miranda v. Arizona, 384 U.S. 436 (1966)
26. 7601 Legislative Proposal for Internet Database of Judges' Credentials by Paul Andrew Mitchell to Rep. Tom Campbell (Oct. 11, 2000 A.D.) (.doc)
27. Folder with SUBPOENA to A.O. for Appointment Affidavits and Oaths of Office for All Judicial Officers
28. Folder with FOIA Request for Multiple Credentials (11/18/2003)
29. Folder with FOIA Reply with Multiple Credentials (3/16/2004)
30. 10918 Credentials Produced in Reply to FOIA Request (3/16/2004)
31. Letter from District Clerk, CDCA, and Annotated Refusal (10/12/2004)
32. Letter from District Clerk, CDCA, and Annotated Refusal (11/2/2004)
33. 16697 NOTICE OF REFUSAL FOR CAUSES, BY AFFIDAVIT (11/04/2004)
34. 17505 FOIA Request for All Credentials of All Judges: USDC/EDCA (11/15/2004)
35. 7755 FOIA Appeal for All Credentials of All Judges: USDC/EDCA (12/27/2004)
36. 18051 FOIA Request for All Credentials of All Judges: USDC/NDCA (11/15/2004)

37. ⁷⁷⁵⁵ [FOIA Appeal for All Credentials of All Judges: USDC/NDCA](#)
(12/27/2004)
38. [Letter from Administrative Office and Annotated Refusal](#) (11/16/2004)
39. ¹⁷¹⁷⁷ [FOIA Request for All Credentials of All Judges: USDC/SDCA](#)
(12/15/2004)
40. ⁷⁷¹⁰ [FOIA Appeal for All Credentials of All Judges: USDC/SDCA](#)
(1/18/2005)

Some .gif files were scanned from copies and edited to eliminate stray pixels.

Return to Table of Contents for

[Supreme Law Library: General Resources](#)

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CODE OF CIVIL PROCEDURE

SECTION 170-170.9

170. A judge has a duty to decide any proceeding in which he or she is not disqualified.

170.1. (a) A judge shall be disqualified if any one or more of the following is true:

(1) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) 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 any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(A) 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; or

(B) A lawyer in the proceeding was associated in the private practice of law with the judge.

A judge who served as a lawyer for or officer of a public agency which 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.

(3) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(A) A spouse or minor child living in the household has a financial interest; or

(B) The judge or the spouse of the judge is a fiduciary who has a financial interest.

A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) For any reason (A) the judge believes his or her recusal would

further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding such prospective employment or service, and either of the following applies:

(A) The arrangement is, or the discussion was, with a party to the proceeding.

(B) The matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral.

For purposes of this paragraph, "party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this paragraph, a "dispute resolution neutral" means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.

170.2. It shall not be grounds for disqualification that the judge:

(a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.

(b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in paragraph (2) of subdivision (a) of, or subdivision (b) or (c) of, Section 170.1.

(c) Has as a lawyer or public official participated in the drafting of laws or in the effort to pass or defeat laws, the meaning, effect or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.

170.3. (a) (1) Whenever a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal and shall not further participate in the

proceeding, except as provided in Section 170.4, unless his or her disqualification is waived by the parties as provided in subdivision (b).

(2) If the judge disqualifying himself or herself is the only judge or the presiding judge of the court, the notification shall be sent to the person having authority to assign another judge to replace the disqualified judge.

(b) (1) A judge who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification, except where the basis for disqualification is as provided in paragraph (2).

A waiver of disqualification shall recite the basis for the disqualification, and is effective only when signed by all parties and their attorneys and filed in the record.

(2) There shall be no waiver of disqualification where the basis therefor is either of the following:

(A) The judge has a personal bias or prejudice concerning a party.

(B) The judge served as an attorney in the matter in controversy, or the judge has been a material witness concerning it.

(3) The judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver of disqualification.

(4) In the event that grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification be waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge.

(c) (1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided

in subdivision (a).

(5) No judge who refuses to recuse himself or herself shall pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In every such case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible.

No challenge pursuant to subdivision (c) of Section 170.3 or Section 170.6 may be made against the judge selected to decide the question of disqualification.

(6) The judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and answer and such written arguments as the judge requests, or the judge may set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge shall permit the parties and the judge alleged to be disqualified to argue the question of disqualification and shall for good cause shown hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge as provided in subdivision (a) of Section 170.3.

(d) The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought within 10 days of notice to the parties of the decision and only by the parties to the proceeding.

170.4. (a) A disqualified judge, notwithstanding his or her disqualification may do any of the following:

(1) Take any action or issue any order necessary to maintain the jurisdiction of the court pending the assignment of a judge not disqualified.

(2) Request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Hear and determine purely default matters.

(4) Issue an order for possession prior to judgment in eminent domain proceedings.

(5) Set proceedings for trial or hearing.

(6) Conduct settlement conferences.

(b) Notwithstanding paragraph (5) of subdivision (c) of Section 170.3, if a statement of disqualification is untimely filed or if on its face it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken.

(c) (1) If a statement of disqualification is filed after a trial or hearing has commenced by the start of voir dire, by the swearing of the first witness or by the submission of a motion for decision, the judge whose impartiality has been questioned may order the trial or hearing to continue, notwithstanding the filing of the statement of disqualification. The issue of disqualification shall be referred to another judge for decision as provided in subdivision (a) of Section 170.3, and if it is determined that the judge is disqualified, all orders and rulings of the judge found to be disqualified made after the filing of the statement shall be vacated.

(2) For the purposes of this subdivision, if (A) a proceeding is filed in a single judge court or has been assigned to a single judge for comprehensive disposition, and (B) the proceeding has been set for trial or hearing 30 or more days in advance before a judge whose name was known at the time, the trial or hearing shall be deemed to have commenced 10 days prior to the date scheduled for trial or hearing as to any grounds for disqualification known before that time.

(3) A party may file no more than one statement of disqualification against a judge unless facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed.

(d) Except as provided in this section, a disqualified judge shall have no power to act in any proceeding after his or her disqualification or after the filing of a statement of disqualification until the question of his or her disqualification has been determined.

170.5. For the purposes of Sections 170 to 170.5, inclusive, the following definitions apply:

(a) "Judge" means judges of the superior courts, and court commissioners and referees.

(b) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(c) "Officer of a public agency" does not include a Member of the Legislature or a state or local agency official acting in a legislative capacity.

(d) The third degree of relationship shall be calculated according to the civil law system.

(e) "Private practice of law" includes a fee for service, retainer, or salaried representation of private clients or public agencies, but excludes lawyers as full-time employees of public agencies or lawyers working exclusively for legal aid offices, public defender offices, or similar nonprofit entities whose clientele is by law restricted to the indigent.

(f) "Proceeding" means the action, case, cause, motion, or special proceeding to be tried or heard by the judge.

(g) "Fiduciary" includes any executor, trustee, guardian, or administrator.

170.6. (a) (1) No judge, court commissioner, or referee of any superior court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no opening statement by counsel for plaintiff, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding, or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (3), the party who filed the appeal that

resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

State of California,) PEREMPTORY CHALLENGE
County of _____) ss.

_____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That _____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this
_____ day of _____, 20____.

(Clerk or notary public or other
officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.

170.7. Section 170.6 does not apply to a judge designated or assigned to serve on the appellate division of a superior court in the judge's capacity as a judge of that division.

170.8. When there is no judge of a court qualified to hear an action or proceeding, the clerk shall forthwith notify the Chairman of the Judicial Council of that fact. The judge assigned by the Chairman of the Judicial Council shall hear the action or proceeding at the time fixed therefor or, if no time has been fixed or good cause appears for changing the time theretofore fixed, the judge shall fix a time for hearing in accordance with law and rules and hear the action or proceeding at the time so fixed.

170.9. (a) No judge shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the California Code of Judicial Ethics adopted by the California Supreme Court or any other provision of law.

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by subdivision (e).

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(3) A gift, bequest, favor, or loan from any person whose preexisting relationship with a judge would prevent the judge from hearing a case involving that person, under the Code of Judicial Ethics adopted by the California Supreme Court.

(c) For purposes of this section, "judge" means judges of the superior courts, and justices of the courts of appeal or the Supreme Court.

(d) The gift limitation amounts in this section shall be adjusted biennially by the Commission on Judicial Performance to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(e) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a judicial or governmental purpose, or to an issue of state, national, or international public policy, is not prohibited or limited by this section if any of the following apply:

(1) The travel is in connection with a speech, practice demonstration, or group or panel discussion given or participated in by the judge, the lodging and subsistence expenses are limited to the

day immediately preceding, the day of, and the day immediately following the speech, demonstration, or discussion, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

For purposes of this section, "foreign bar association" means an association of attorneys located outside the United States (A) that performs functions substantially equivalent to those performed by state or local bar associations in this state and (B) that permits membership by attorneys in that country representing various legal specialties and does not limit membership to attorneys generally representing one side or another in litigation. "International service organization" means a bona fide international service organization of which the judge is a member. A judge who accepts travel payments from an international service organization pursuant to this subdivision shall not preside over or participate in decisions affecting that organization, its state or local chapters, or its local members.

(3) The travel is provided by a state or local bar association or judges professional association in connection with testimony before a governmental body or attendance at any professional function hosted by the bar association or judges professional association, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the professional function.

(f) Payments, advances, and reimbursements for travel not described in subdivision (e) are subject to the limit in subdivision (a).

(g) No judge shall accept any honorarium.

(h) "Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal or like gathering.

(i) "Honorarium" does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received pursuant to Section 94.5 of the Penal Code for performance of a marriage.

For purposes of this section, "teaching" shall include presentations to impart educational information to lawyers in events qualifying for credit under Mandatory Continuing Legal Education, to students in bona fide educational institutions, and to associations or groups of judges.

(j) Subdivision (a) and (e) shall apply to all payments, advances, reimbursements for travel and related lodging and subsistence.

(k) This section does not apply to any honorarium that is not used and, within 30 days after receipt, is either returned to the donor or delivered to the Controller for deposit in the General Fund without being claimed as a deduction from income for tax purposes.

(l) "Gift" means any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or

discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

However, the term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars, periodicals, cassettes and discs, or free or reduced-price admission, tuition, or registration, for informational conferences or seminars. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(3) Gifts from a judge's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(7) Admission to events hosted by state or local bar associations or judges' professional associations, and provision of related food and beverages at such events, when attendance does not require "travel" as described in paragraph (3) of subdivision (e).

(m) The Commission on Judicial Performance shall enforce the prohibitions of this section.

MEMO

TO: Mr. Peter D. Shepherd
General Counsel Division
Department of Justice
1162 Court Street N.E.
Salem 97301-4096
OREGON, USA

COPY

FROM: Paul Andrew Mitchell, B.A., M.S.
Private Attorney General and Plaintiff
Superior Court of California #GIC807057

DATE: January 14, 2005 A.D.

SUBJECT: widespread conspiracy in the federal judiciary

Greetings Mr. Shepherd:

Under separate cover we have mailed to your attention a number of documents which pertain to our ongoing investigation of corruption and racketeering among certain personnel employed by the federal judiciary, particularly in California.

Our formal investigation began as an essential feature of my federal copyright and trademark infringement case, which was filed in the District Court of the United States in Sacramento, California. See the Lanham Act at 15 U.S.C. 1121 for the Congressional grant of original jurisdiction over trademark infringements. Please be aware that Title 15 of the United States Code has not yet been enacted into positive law; we did, however, confirm that this codified version of the original Statute at Large is presently accurate.

As that case progressed through the federal courts, all the way to the U.S. Supreme Court, we wish to impress upon you the fact that federal judicial personnel at each step turned up without the requisite credentials. These personnel included Dale A. Drozd and William B. Shubb at the federal district court; Sidney R. Thomas and Stephen S. Trott at the Ninth Circuit; and Ruth Bader Ginsburg, Stephen G. Breyer and Clarence Thomas at the U.S. Supreme Court.

We have been very pleased to enjoy timely and professional assistance from the U.S. Department of Justice in responding to all of our requests submitted under the Freedom of Information Act. Their strict obedience to all applicable federal laws stands in stark contrast to the utter contempt which federal judicial personnel now exhibit for the U.S. Constitution, Laws and Treaties of the United States. See the Supremacy Clause for paramount authority here.

Along the way, we continued to document and publish our methods and results in the Supreme Law Library on the Internet. Lately, others have begun to utilize those published resources, and the results they have obtained are remarkably, if regrettably, similar to mine.

1 For example, a client applied our methodology to request all 4
2 requisite credentials for all federal judicial personnel currently
3 seated on the U.S. District Court in downtown Los Angeles.

4
5 Approximately half of those "robes" turned up without one or more of
6 those four credentials. When that client retained me for further
7 counsel, we went the extra mile to notify all affected personnel of
8 the missing credentials, and to demand that they exhibit same within a
9 reasonable deadline. Those missing credentials are *still* outstanding.

10
11 Given the direction and momentum which this investigation has now
12 taken, we then felt it would be most appropriate to request all 4
13 requisite credentials for *all* personnel currently seated on the Ninth
14 Circuit and on *all* U.S. District Courts throughout California State.
15 I am happy to report that proper FOIA requests are now pending for all
16 of such credentials, including also all 45 seats on the U.S. Court of
17 Appeals for the Ninth Circuit, with offices in San Francisco.

18
19 We do also wish to stress that we have succeeded in locating the
20 specific federal statutes which designate the legal custodians of the
21 requisite Presidential Commissions and Appointment Affidavits. Those
22 statutes are 5 U.S.C. 2902 and 2906, respectively.

23
24 Sadly, federal district court clerks continue to refer us to the
25 Administrative Office for the U.S. Courts for those credentials,
26 despite the law which clearly designates the clerk of court as the
27 legal custodian of the Appointment Affidavits for all federal judges,
28 all federal magistrates and all federal district court clerks.

29
30 To exhaust our remedies and demonstrate good faith and due diligence,
31 we served a SUBPOENA IN A CIVIL CASE upon the Administrative Office in
32 Washington, D.C., for all Oaths of Office and all Appointment
33 Affidavits for all federal justices, judges, magistrates, clerks and
34 deputy clerks, no exceptions. That A.O. is now in contempt of court
35 for having fallen silent in response to that lawful SUBPOENA.


36
37 As you can see, Mr. Shepherd, anyone with half a brain can view the
38 evidence we have acquired to date and develop the reasonable
39 suspicion, if not a final conclusion, that **our federal judiciary in**
40 **America appears to be heavily infiltrated by impostors**, who are either
41 unwilling and/or unable to produce the credentials that are required
42 of them by applicable federal laws.

43
44 In our professional opinion, this reasonable suspicion is fully
45 justified by the material evidence now in our possession and, as such,
46 it constitutes probable cause to charge the personnel in question with
47 impersonating officers of the United States, for violating the federal
48 criminal statutes at 18 U.S.C. 912 (impersonation), if not also 18
49 U.S.C. 1341 and 1962 (mail fraud and racketeering, respectively).

50
51 Under separate cover, we have now transmitted to you a quite thorough
52 set of documentary evidence supporting our observations above.

53
54 If my office can assist you further, please don't hesitate to ask.

1 Sincerely yours,

2
3 /s/ Paul Andrew Mitchell 

4
5 Paul Andrew Mitchell, B.A., M.S., Plaintiff and
6 Private Attorney General, 18 U.S.C. 1964(a):
7 Superior Court of California docket #GIC807057

8
9 All Rights Reserved without Prejudice (see UCCA 1207)

10
11 copy: Office of the Governor, State of Oregon
12 Hon. Hardy Myers, Attorney General, State of Oregon
13 U.S. Department of Justice, Washington, D.C.
14 U.S. Postal Inspection Service, Salem, Oregon
15 Office of Attorney General, State of California, San Diego
16 Foreperson, San Diego County Grand Jury
17

18 p.s. Please feel free to utilize the resources we have now published
19 in the Supreme Law Library, to apply this investigation inside Oregon.

Supreme Law Library : Resources

Required Credentials for United States Judges

• [Note: Small numbers indicate number of binary bytes in .gif files.]

Table of Contents

.gif files are Graphics Interchange Format: use any graphics viewer, e.g. MS Photo Editor
.doc files are Microsoft WORD 2002: use **View** | **Print Layout** in MSIE Version: 6.0.2600 +

1. Sample Folder with Scanned Forms
2. 10559 Authorities in re: Presidential Commissions (.doc)
3. 10065 Statutes Defining Legal Custodian of Federal Judges' Oaths of Office
4. 133410 Sample Form 61 Appointment Affidavit
5. 145099 Sample Presidential Commission
6. 43819 Sample Consent by United States Senate
7. 104118 Sample Oath of Office for United States Judges
8. 7396 FOIA Request for Supreme Court Commissions and Reply (11/21/2003)
9. 5437 Ninth Circuit "Robes" as of July 1, 2003 *A.D.*
10. 32911 MOTION FOR MANDATORY JUDICIAL NOTICE, BY
AFFIDAVIT of Evidence against Stephen S. Trott (2/23/2003) (.doc)
11. 268261 CRIMINAL COMPLAINT against Stephen S. Trott (9/18/2003) (.doc)
12. Folder of Evidence against Stephen S. Trott: Impersonating an Article
III Judge
13. 159890 28 U.S.C. 372(c) Complaint against William B. Shubb,
USDC/Sacramento
14. 268261 CRIMINAL COMPLAINT against William B. Shubb (9/18/2003) (.doc)