



Judicial Council of California

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April 2, 2024

Hon. Ash Kalra, Chair
Assembly Judiciary Committee
1021 O Street, Suite 4610
Sacramento, CA 95814

Subject: Assembly Bill 2125 (Garcia), as amended March 6, 2024—Oppose
Hearing: Assembly Judiciary Committee—April 9, 2024

Dear Assembly Member Kalra:

The Judicial Council must regretfully oppose Assembly Bill 2125, which would permit a party who obtains a reversal from the California Supreme Court to remove one or more of the appellate justices who authored or concurred in the appellate decision and would make judges serving on the appellate division of the Superior Court subject to disqualification when serving on an appellate division panel because it would result in significant delays in appellate proceedings without any real benefit to appellate litigants or the public.

Appellate courts have historically been exempted from the disqualification provisions in the Code of Civil Procedure because they have a different role in the process than the trial courts, and they include built in mechanisms to minimize judicial bias. The appellate process is structured to protect against individual bias by requiring a three-judge panel to decide each case, both at the appellate division of the Superior Court and at the intermediate courts of appeal. The California Supreme Court serves as an additional check in areas of the law where there is a split between the courts or where a prior Supreme Court precedent may need to be revisited in light of subsequent related decisions.

In addition, appellate court justices are required to disqualify themselves when they have any reason to believe that they cannot be impartial, or when they have any specific financial or

personal conflicts as set forth in Canons 3E(4) and (5) of the California Code of Judicial Ethics. These conflicts are assessed at the outset when the panel is being assigned to prevent any appearance of bias or prejudice. By contrast, disqualification of a whole panel or majority of a panel after a reversal would result in significant delays in implementing the holding of the Supreme Court because the newly assigned justices and their attorneys would need to duplicate the work done by the prior panel and a second oral argument would need to be extended. This would also create significant logistical challenges in the courts that have been divided into divisions by the Legislature as provided by Article VI, Section 3 of the California Constitution because those courts only have three to four justices assigned and thus would need to request that the Chief Justice reassign the case to a different division within their district. This result would cause substantial delays in resolving cases and make it difficult for the courts to manage their existing caseloads in a timely manner.

The council also has significant concerns about the impact of making Superior Court appellate division judges subject to disqualification pursuant to section 170.6 when they are serving in an appellate role. Currently they are subject to disqualification pursuant to Code of Civil Procedure section 170.3 which allows a party to object if they believe that a judge inappropriately refused to recuse themselves, but they are not subject to the more peremptory disqualification in section 170.6. Appellate division panels also consist of three judges who must be assigned by the Chief Justice. In small courts with only two judges, they must rely on the assignment of judges from neighboring counties, and in larger courts there may be only four judges assigned to the appellate division. If these appellate division judges were subject to disqualification pursuant to section 170.6, it would require many more judges to be assigned to serve on these panels and cause delays for the other cases and calendars that those trial judges would typically be assigned to hear.

These significant disruptions and delays might be justified if there was evidence of pervasive bias on appellate panels, but no such evidence has been provided. The council has not been made aware of instances in which a litigant believed that an appellate court justice was prejudiced against them after reversal by the Supreme Court, nor of cases that returned to the Supreme Court a second time because the intermediate appellate court misapplied the holding of the Supreme Court. In support of AB 2125 the author and sponsor cite the maxim that “justice delayed is justice denied.” While the process of fair and effective appellate review is one that takes time, it is clear that AB 2125 will not expedite the resolution of cases, but rather cause delay with no concomitant benefit to the parties or the public.

In sum, AB 2125 would unnecessarily delay cases and interfere with the work of the appellate courts without providing any real benefit to the litigants or the public. For these reasons, the Judicial Council opposes AB 2125.

Hon. Ash Kalra

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Should you have any questions or require additional information, please contact Heather Resetarits at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/HS/ad

cc: Members, Assembly Judiciary Committee
Hon. Eduardo Garcia, Member of the Assembly
Ms. Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Mr. Daryl Thomas, Consultant, Assembly Republican Office of Policy and Budget
Mr. Jith Meganathan, Legislative Affairs Secretary, Office of the Governor
Ms. Shelley Curran, Administrative Director, Judicial Council of California