

***PROPOSED AMENDMENTS TO RULE 106,
RULES OF PROCEDURE OF THE STATE BAR***

[Proposed additions to current rule in **Bold**; Proposed deletions to current rule in ~~Strikeout~~]
(Amended by the Board of Governors May 15, 2009.)
(Effective July 1, 2009.)

RULE 106 DISQUALIFICATION OF JUDGES

- (a) A judge ~~shall~~ **must** be disqualified if he or she is subject to disqualification under Code of Civil Procedure section 170.1; or
- (b) A judge pro tempore ~~shall~~ **must** be disqualified if the judge pro tempore or the office with which he or she is affiliated, is or represents:
 - (1) a party to pending litigation involving any party or counsel in the proceeding, or the law office with which any party or counsel is affiliated, or
 - (2) a party represented by any party or counsel in the proceeding, or the law office with which any party or counsel is affiliated.
- (c) Only the provisions of Code of Civil Procedure sections 170.2, 170.3(b), 170.4, and 170.5(b)-(g) ~~shall~~ apply to judicial disqualification in State Bar Court proceedings. A judge who recuses himself or herself ~~shall~~ **must** promptly give notice of the recusal to the judge who has authority to assign the matter to another judge.
- (d) An assigned judge's consideration or rejection of a stipulation in a proceeding ~~shall~~ **must** not be a basis for disqualification of the judge from that proceeding. Submission of a stipulation to the assigned judge for approval constitutes a waiver of any contention that the judge is disqualified due to the judge's consideration or rejection of the stipulation. The parties may submit a stipulation to a settlement judge pursuant to rule 133 prior to the filing of a notice of disciplinary charges or at any time thereafter. The settlement judge ~~shall~~ **must**, in the absence of the stipulation of the parties, be disqualified from presiding over the trial of the matter. In a proceeding in which a party seeks relief from default, it ~~shall~~ **must** not be a basis for disqualification that the judge heard evidence or filed a decision prior to the filing of the motion for relief from default.
- (e) If a judge refuses or fails to disqualify himself or herself, any party may file a motion to disqualify the judge. The motion shall contain a verified statement setting forth the facts constituting the grounds for disqualification. Copies of the motion ~~shall~~ **must** be served on the opposing party and **must be personally served** upon the judge alleged to be disqualified, **or on his or her case administrator, provided that the judge is present in the State Bar's offices or**

in chambers. The following time limits and procedures shall apply:

- (1) The motion to disqualify ~~shall~~ **must** be made within the earliest of the following dates:
 - (i) ten (10) days after the ground for disqualification first became known to the party making the motion or to that party's counsel;
 - (ii) prior to commencement of trial;
 - (iii) as to a judge of the Review Department, twenty (20) days prior to oral argument held before the Review Department; and
 - (iv) if the assignment of the matter to the judge, or the grounds for disqualification were not known to the moving party sufficiently in advance to permit the filing of a written motion in accordance with paragraphs (e), the party ~~shall~~ **must** file the motion promptly and ~~shall~~ **must** make an oral motion at the start of the next hearing, trial, conference, or argument.
- (2) Within ten (10) days after service of the motion, the judge may file a consent to disqualification, in which case the judge ~~shall~~ **must** promptly give notice of the disqualification to the judge who has authority to assign the matter to another judge. Alternatively, the judge may file a verified answer admitting or denying any or all of the allegations contained in the party's motion and setting forth any additional facts material or relevant to the question of disqualification. The clerk ~~shall~~ **must** transmit a copy of the judge's answer to each party.
- (3) A judge who fails to file a consent or answer within the time allowed ~~shall~~ **must** be deemed to have consented to his or her disqualification and the Clerk ~~shall~~ **must** promptly notify the judge who has authority to assign the matter to another judge.
- (4) ~~No~~ A judge who refuses to recuse himself or herself ~~shall~~ **must not** pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statements of disqualification filed by a party. In every such case, the question of disqualification ~~shall~~ **must** be heard and determined by another judge selected by the presiding judge or the supervising judge.
- (5) The judge deciding the question of disqualification may decide the question upon the basis of the statement of disqualification and answer and upon such written arguments as the judge requests. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question ~~shall~~ **must** promptly give notice of the disqualification to the judge who has authority to assign the matter to another judge.
- (f) A party who is dissatisfied with the ruling on a motion for disqualification made by the judge designated by paragraph (e) may file a petition for review. A petition to review a ruling on a motion to disqualify a judge may be filed pursuant to rule

APPENDIX A

300 within ten (10) days after the ruling is made (if it is first made orally) or within ten (10) days after service of notice of the ruling (if it is first made in writing). The Review Department ~~shall~~ **must** act on the petition on an expedited basis.