

Courts Cannot Limit Code of Civil Procedure Section 170.6 Challenges By Local Rule, Fourth District Holds

Tim Kowal August 19, 2024



One reason trial prep is so stressful is you don't know if you might get a different judge—or if you'll have the right to make a [Code of Civil Procedure section 170.6](#) peremptory challenge to the new judge. When you get an all-purpose assignment, you have 10 days to make a challenge.

But if you're in a "master calendar" court, you have to make your challenge before the case is assigned to trial. The San Diego Superior Court got the idea to deem every judge a "master calendar" judge. This sets your section 170.6 deadline as "the time the cause is assigned for trial"—and if you're reassigned for trial, that means pretty much instantaneously.

So when the plaintiff in [Lorch v. Superior Court \(2024\) 101 Cal.App.5th 1266](#) got a voicemail from the clerk just before 3:00 p.m. the Friday before trial, and e-filed her section 170.6 peremptory challenge on Saturday, she was dismayed to find the judge reject it as untimely.

And not just reject the 170.6, but in conspicuous fashion. When counsel asked to make a record, the judge said, "I need to hear from plaintiff's counsel about why they dislike me so much." When counsel reiterated the 170.6, the judge interjected: "You untimely exercised a defective peremptory challenge is what happened."

Counsel asked for a stay to take a writ, but the judge refused that too.

So a two-day trial went forward, resulting in a defense verdict. Plaintiff then, within the 10-day statutory period (Code Civ. Proc., § 170.3(d)), filed a writ petition.

Granting the writ, the Court of Appeal concluded that a clerk's telephone call does not trigger the master calendar rule. But the court went on to reject the San Diego Superior Court's local rule 2.1.3 as inconsistent with Code of Civil Procedure section 170.6. Rule 2.1.3 purports to deem every case assignment an assignment to a "master calendar department." In addition to absurd, "[a] local court rule may not alter the true meaning of the statute."

University of San Diego School of Law Professor Shaun Martin [notes](#) that "San Diego has already dealt with this problem; indeed, did so last month, before Court of Appeal published *Lorch*. It created a master calendar judge (the supervising judge), and let all-purpose judges assign the case to the master calendar judge if the case is ready for trial but the all-purpose judge isn't ready."

This article was *originally published* on the website of [Kowal Law Group](#).

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