

Clock to File Peremptory Challenge to Judge Doesn't Start Running If 'Significant Issue' Was Left Unassigned, Fourth District Holds

Tim Kowal July 31, 2024



The first thing you do after filing a case is check the assigned judge. Once the judge has been assigned “for all purposes,” you have 15 days to file your peremptory challenge to disqualify that judge. There are a few wrinkles to that “all purpose assignment” deadline, however. The court addressed them in *Taylor v. Superior Court* (D4d2 May 9, 2024 No. E082661) [nonpub. opn.], before issuing a writ directing the trial judge, who had incorrectly rejected the challenge as untimely, to grant disqualification.

The parties in *Taylor*, initially assigned to a commissioner, were later assigned the trial to Judge Susanne Cho—the only judge in the family branch. Remember that fact.

But the commissioner also reserved a significant hearing. Remember that fact, too.

A few months later, the case was assigned to Judge Cho—this time “for all purposes.” Taylor filed his Code of Civil Procedure section 170.6 peremptory challenge the next day. But Judge Cho denied the motion as untimely, pointing to the fact that she had been assigned the trial much more than 15 days prior.

Issuing a writ, the Court of Appeal noted that an assignment merely for trial was not the same as an assignment “for all purposes.” Specifically, at the time of the trial assignment, there was still a “substantial matter” pending before the commissioner, and this defeats the 15-day “all purpose assignment” deadline. (*People v. Superior Court (Lavi)* (1993) 4 Cal.4th 1164, 1180, fn. 13.)

But what about the fact that Judge Cho was the only judge on the family panel? There is a “one-judge court” exception under section 170.6(2), which provides that, for courts that have only one judge, the deadline to file the challenge is 30 days from the party’s first appearance. Here, Judge Cho was the only judge on the family panel, and it was long after 30 days from Taylor’s first appearance.

That’s not how that works, the court explained. There are 53 judges in the Riverside Superior Court. Just because they may be split up into various “branches” does not change the fact that this is far from a “one-judge court.”

Takeaway: When in doubt about when to file something, usually it is good advice to file sooner than later. But that advice does not hold when it comes to peremptory challenges because your challenge may be premature, and it may be wasted. So you need to know when an all-purpose assignment happens. And know that you need to challenge an erroneous denial of a peremptory challenge by writ within 10 days.

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