

PEREMPTORY CHALLENGE OF A JUDGE

Remove the Judge from Your Case

Disclaimer: This guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance, consult a lawyer.

CONTENTS

This packet includes:

- Sample Motion for Peremptory Challenge
- Sample Declaration in Support of Peremptory Challenge
- Sample Order of Transfer
- Chart to determine when to file the Challenge

BACKGROUND

If you have a case in superior court, and you believe you cannot get a fair and impartial hearing or trial from the judge, commissioner, or referee assigned to your case, [California Code of Civil Procedure § 170.6](#) gives you the right to disqualify him or her without having to show a reason. This is called a peremptory challenge.

What kinds of cases allow me to challenge the judge?

Challenges can be made at any trial, special proceeding, or hearing involving “a contested issue of law or fact.” Examples are a civil or criminal trial, law and motion proceedings, injunction hearings, and contested probate or family law proceedings.

When are challenges *not* allowed?

They cannot be used to disqualify judges at settlement conferences or case management conferences.

How many challenges am I allowed?

Each side gets to challenge a judge *one time only*. You have no control over the judge assigned to take over your case, so avoid hasty or ill-informed decisions to disqualify.

How do I let the court know I am challenging the judge?

The challenge is usually made by a written motion to the court in the proper format with specific language and supported by a declaration made under penalty of perjury. An oral motion under oath is also allowed.

When do I make the motion?

Your motion must be timely and it must be made before the hearing or trial. It may not be made after the hearing or trial commences. There are specific deadlines and strict timeframes in which the challenge must be made, depending on your court's calendaring system (see chart). Improper timing is the number one reason that challenges are rejected.

Note: Even if your deadline has passed for filing a timely peremptory challenge, you still have the right to challenge the judge *for cause* under [California Code of Civil Procedure § 170.1](#). Grounds for such a challenge (relationship, financial interest, etc.) can arise at any time during the proceedings. Therefore, a challenge “for cause” is timely if raised “at the earliest practicable opportunity” after discovering ground for disqualification, even *during trial*.

How long does it take to get a new judge after my challenge is filed?

It may be hours or days before a new judge can be assigned to your case after a [§ 170.6](#) motion is filed.

Learn what you can about the judge in order to make the best decision.

Often you will know the name of the judge assigned to your case in advance. If you have never before been in front of this judge, take advantage of this notice. Make time to visit the judge's courtroom to watch how he or she handles cases like yours. Knowing that you wish to disqualify a judge early in the process gives you time to prepare a proper written challenge.

If you don't know who the judge will be prior to your court date, you may make your challenge orally when your case is called.

What if I feel the judge is guilty of misconduct?

The State of California Commission on Judicial Performance reviews complaints charging judicial misconduct. This is not a substitute for the appellate process, or a tactic to use when one is unhappy with a judge's ruling. Judicial misconduct is a separate matter, requiring a different procedure. Procedures and the form of complaint for judicial misconduct may be found at http://cjp.ca.gov/file_a_complaint.htm.

PROCEDURE

There are no fill-in-the-blanks forms for a Peremptory Challenge of a Judge. You will need to draft your own pleadings. The documents that you file with the court must contain very specific language. The Law Library has resources that provide models of these documents, which you can use as a guide for drafting your own pleadings. Samples of the required documents, with instructions, are also found at the end of this guide. Customizable samples of these documents can also be downloaded from the library's website at <http://www.saclaw.org/pages/peremptory.aspx>.

Step-by-Step Instructions

STEP 1: KNOW YOUR COURT'S CALENDARING SYSTEM

The court calendaring system under which your case is assigned depends on the county where the case is filed and the type of case. In some courts trial judges are not assigned at the time of filing, but at a later date.

STEP 2: DETERMINE YOUR DEADLINE

Consult the chart below to determine the last day to file a peremptory challenge in your local superior court. If you are unsure about the type of calendaring system your court has, contact the court clerk for information.

STEP 3: CHECK YOUR COURT'S RULES

Variations in procedure designed by your county court are generally minor, but you want to make sure you are in compliance. For instance, special courts, such as Dependency Court and Family Court, may have specific rules that limit or completely prohibit a peremptory challenge in certain types of proceedings. In Sacramento, check the [Sacramento County Local Rules](#).

STEP 4: DRAFT YOUR MOTION, DECLARATION, AND ORDER

You may download customizable samples of a Motion for Peremptory Challenge, Declaration in Support of Peremptory Challenge, and Order of Transfer from the library's website at <http://www.saclaw.org/pages/peremptory.aspx>. You will need to modify the text in blue to fit the specific facts of your case, and change the color of the text from blue to black. The court will not accept blue type in pleadings. Although this guide is printed double-sided to save paper, you must print your motion single-sided; the court will not accept double-sided pleadings.

STEP 5: MAKE COPIES

Make two (2) copies of each of your documents. The original will be filed with the court. One copy will need to be "served" on the other party, and one copy should be kept for your records.

STEP 6: HAVE THE MOTION SERVED

The person who is serving your Motion for you must complete a proof of service form, typically, either a Proof of Personal Service form or a Proof of Service by First Class Mail form. For more information on these Proofs of Service, see the guides on our website at <http://www.saclaw.org/pages/personal-service.aspx> and <http://www.saclaw.org/pages/pos-mail.aspx>, respectively.

STEP 7: FILING/FEES

Documents are filed with the clerk at the courthouse where the matter is being heard. For Civil cases, file your documents at the [Gordon D. Schaber Courthouse](#) at 720 Ninth Street downtown. For Family Law cases, file your documents on the first floor of the [William R. Ridgeway Family Relations Courthouse](#) located at 3341 Power Inn Rd.

Current fees are available on the [Sacramento County Superior Court's website](#). If you qualify for a fee waiver, you may file a request with the court. For more information, see the Step-by-Step guide on Fee Waivers on our website at <http://www.saclaw.org/pages/fee-waiver.aspx>

FOR MORE INFORMATION

At the Law Library:

California Forms of Pleading and Practice

[KFC 1010 .A65 C3](#) (Ready Reference)

Vol. 27, Chapter 317, *Judges*.

Electronic Access: On the Law Library's computers, using the *Matthew Bender CD*.

California Practice Guide: Civil Trials and Evidence

[KFC 1025 .A9 W44](#)

Vol. 1, Chapter 3, *Challenging the Judge*.

Electronic access: On the Law Library's computers, using *WestlawNext*.

California Trial Practice: Civil Procedure During Trial

[KFC 1025 .A16 F74](#)

Vol. 1, Chapter 6, *Court Conferences and Selected Pretrial Motions*

Electronic access: On the Law Library's computers, using *OnLaw*.

CHART: DEADLINES FOR MAKING YOUR CHALLENGE

The timing and deadlines for challenging the judge depend on your court's local rules.

1. Consult local rules or contact the court clerk to determine your court's method of assigning cases to judges (master calendar, judge for all purposes, etc.).
2. Identify the date of your trial or hearing.
3. Use a calendar to determine your deadline for filing a challenge. From your trial or hearing date, count backwards the required number of days needed to challenge a judge. If the 10th day is a holiday or weekend, keep counting backwards until you reach a business day. This is the **last** day a party can file a timely peremptory challenge under [CCP § 170.6](#).

Type	Notice Required
Courts using Master Calendar System	Under this system, a challenge must be made at the time of the assignment (i.e., when both sides answer "ready" at the call of the calendar).
All-Purpose Judge	The challenge must be made within 15 days after notice of the all-purpose assignment, or, if the challenging party has not yet appeared, then within 15 days after the <i>appearance</i> .
Where Judge's Identity Known Before Trial (10 day/5 day rule)	In this situation, if the identity of the judge is known at least 10 days prior to the date of the hearing or trial, the challenge must be made at least 5 days before the trial or hearing date.
Coordinated Proceedings	A challenge to an assigned judge in coordinated proceedings must be made within 20 days after service of the order of appointment.
Single-Judge Courts	In courts having only one judge, a challenge must be made within the first 30 days after appearance of the challenging party.

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

updated May 2013 rmm Reviewed 08/2013 by EN

IMPORTANT: RED boxes and arrows are instructions, and are not a part of your completed document. Text that appears in BLUE is text you will change to fit your case. When you print your motion and other supporting documents, be sure to use BLACK in for your text. The court will reject your papers if they have BLUE text.

1 [YOUR NAME]
[Street Address]
2 [City, State, ZIP]
[Phone Number (with area code)]
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5
6 [YOUR NAME], IN PRO PER

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO
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12
13 [NAME OF PLAINTIFF],) Case No.: [INSERT CASE NUMBER]
14)
Plaintiff,)
15) MOTION FOR PEREMPTORY CHALLENGE
vs.)
16)
17 [NAME OF DEFENDANT],)
18)
Defendant)

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20 TO THE HONORABLE [INSERT PRESIDING JUDGES NAME], PRESIDING JUDGE
21 OF THE ABOVE ENTITLED COURT
22

23 The [INSERT EITHER PLAINTIFF OR DEFENDANT] in the above-entitled
24 matter hereby moves that the trial or hearing, which involves a
25 contested issue of law or fact, and which has been assigned to the
26 Honorable [INSERT NAME OF THE JUDGE YOU WISH TO REMOVE], Judge of
27 the above-entitled Court, be reassigned from that Judge, and that
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1 no matters hereinafter arising in this cause be heard or assigned
2 to the Honorable [INSERT NAME OF THE JUDGE YOU WISH TO REMOVE], on
3 the ground that said Judge is prejudiced against the [INSERT EITHER
4 PLAINTIFF OR DEFENDANT] in this action.

5 This motion is based on the matters contained herein, on Code of
6 Civil Procedure Section 170.6 and on the supporting Declaration
7 Under Penalty of Perjury of [YOUR NAME] attached hereto and filed
8 herewith.
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10
11 WHEREFORE, [YOUR NAME] prays that the relief herein requested be
12 granted.
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17 Dated: [INSERT DATE]
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19
20 *[Your signature]*

21 _____
[YOUR NAME]

22 In Pro Per
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1 [YOUR NAME]
2 [Street Address]
3 [City, State, ZIP]
4 [Phone Number (with area code)]

5 [YOUR NAME], IN PRO PER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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10 FOR THE COUNTY OF SACRAMENTO

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12
13 [NAME OF PLAINTIFF],) Case No.: [INSERT CASE NUMBER]
14)
15 Plaintiff,)
16 vs.) DECLARATION IN SUPPORT OF
17 [NAME OF DEFENDANT],) MOTION FOR PEREMPTORY CHALLENGE
18 Defendant)
19)

20 I, [YOUR NAME] declare that:

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23 1. I am the [INSERT EITHER PLAINTIFF OR DEFENDANT] in the above-
24 entitled matter.
25 2. The Honorable [INSERT NAME OF THE JUDGE YOU WISH TO REMOVE],
26 Judge to whom the [INSERT TRIAL OR HEARING] of the above-
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entitled matter is pending in [INSERT DEPARTMENT NUMBER], is prejudiced against the [INSERT EITHER PLAINTIFF OR DEFENDANT].

3. Declarant believes that the [INSERT EITHER PLAINTIFF OR DEFENDANT] cannot have a fair and impartial trial or hearing before this Judge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: [INSERT DATE]

[Your signature]

[YOUR NAME]

In Pro Per

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1 [YOUR NAME]
2 [Street Address]
3 [City, State, ZIP]
4 [Phone Number (with area code)]

5
6 [YOUR NAME], IN PRO PER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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10 FOR THE COUNTY OF SACRAMENTO

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13 [NAME OF PLAINTIFF],) Case No.: [INSERT CASE NUMBER]
14)
15 Plaintiff,)
16 vs.) ORDER OF TRANSFER
17 [NAME OF DEFENDANT],)
18 Defendant)

19 _____
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21 The written motion of the [INSERT EITHER PLAINTIFF OR
22 DEFENDANT] in the above-entitled matter for the peremptory
23 disqualification of the Honorable [INSERT NAME OF THE JUDGE YOU
24 WISH TO REMOVE] of the above-captioned Court, and the supporting
25 declaration under penalty of perjury of [YOUR NAME], have been duly
26 presented and filed, it is established, as provided in Section
27 170.6 of the Code of Civil Procedure that the Honorable [INSERT
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NAME OF THE JUDGE YOU WISH TO REMOVE], is prejudiced against the
[**INSERT EITHER PLAINTIFF OR DEFENDANT**] or the interest of that
party in the above-entitled matter.

THEREFORE, IT IS HEREBY ORDERED that the Honorable [**INSERT NAME
OF THE JUDGE YOU WISH TO REMOVE**], is relieved from [**INSERT HIS/HER**]
assignment as judge in the above-entitled matter, and now set for
hearing on [**INSERT DATE OF HEARING**], and from any and all other
assignments in this cause, and that the hearing shall proceed
before the Honorable _____, in Department
_____ of this court, at the time now set for the hearing.

DATE: _____

JUDGE SIGNATURE

Presiding Judge