



## How's Your Judge?

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Do you know the answer to the question posed above? If you don't, you could be in for unpleasant surprises as your lawsuit progresses and in the ultimate judgment issued by the court.

In the vast majority of courts in California, when a lawsuit is filed, the case will be assigned to a judge. You may believe that because your case will ultimately be decided by a jury, it does not matter who your judge is. This is proven untrue in real-world litigation. Whether you are a plaintiff or a defendant, the decisions made by this one individual can dramatically impact the outcome of your case. What do you know about this judge, and what should you try to learn at the onset of the case? Once an attorney files the client's initial appearance in the case, she has a mere 15 days thereafter to file the one peremptory challenge to the assigned judge pursuant to Code of Civil Procedure §170.6, which results in the random assignment of a new judge.

Attorneys who have been practicing for several years may be familiar with many judges in various counties. However, there are judges whom they may have never personally been in front of and/or have never even heard of. When clients hire an attorney to represent them, one of the first tasks is to learn who the judge is. Some attorneys may have a personal list of judges to avoid, as well as ones they know to be outstanding jurists. There are also those who would be considered acceptable because it is known they are fair and impartial, hardworking, thoughtful and respectful to the attorneys who appear in their courtroom. If the client's case is assigned to a judge the attorney is familiar with (good or bad), the task of "knowing your judge" is easy, and the decision on whether to file your one peremptory challenge to the assigned judge requires little or no investigation.

The difficulty is when the case is assigned to a judge you know nothing about. What do you need to know about this judge, and how do you find out? The published Judicial Profiles, while a good source for general background information on judges, such as educational background and legal experience, do not provide the kind of information necessary to allow an attorney to decide whether to seek an alternative judge through a peremptory challenge. Actually, some of the judicial profiles contain mostly favorable reviews from members of the legal community. They can still be used to see what law firms the judge may have worked at prior to becoming a judge to get a feel for whether he may favor the defense side or plaintiff side from a general

perspective. Just because a judge might be known to be more defense oriented or plaintiff oriented is not, in itself, a reason to disqualify the judge.

Most attorneys may prefer a judge who allows the attorneys and the parties to run their own case, without too much interference from the court. The judge is there to monitor the progress of the case, make sure the case is moving along adequately, and resolve any procedural or discovery disputes the parties and their counsel are unable to resolve on their own. The judge is also there to rule on issues and claims that can be decided as a matter of law, in the context of demurrers, motions to strike, motions for judgment on the pleadings, and motions for summary judgment/adjudication. If the matter is one that must proceed to trial, the judge should take into account the needs and expectations of the parties as to when the case should be set for trial.

If you are assigned to a judge you are unfamiliar with, you might reach out to other lawyers in your firm to ask what they know about the judge. If no one in the firm knows the judge, expand your inquiries to various colleagues in the legal community. If you are unable to get a single personal opinion about the judge through those methods, you may resort to an online search to see what information might be available on the internet.

In some instances, you might have a judge who appears accommodating, thorough and well-reasoned, and pragmatic at trial, only to make a post-trial ruling that makes no sense and is contrary to law. On the other hand, there are judges who make an attorney's life miserable in all pre-trial matters, and create multiple delays in getting the case to trial, but then you discover they make for excellent judges once the case actually proceeds to trial. This is something you will want to know in deciding whether to keep such a judge.

Below are some critical aspects you should endeavor to know about an assigned judge in order to properly consider whether to file a peremptory challenge and disqualify him:

- Does this judge ever act irrationally or demonstrate that he is not fully competent, such as issuing rulings or orders that are contrary to established legal precedent or procedural rules?
- Is the judge respectful to the attorneys and litigants who appear before him?
- Has the judge ever displayed anger toward any other person in the courtroom, including the judge's own courtroom staff? A judge with a short temper may not be fit to preside over your case.
- Has the judge ever issued post trial rulings that serve to undermine a jury's proper verdict?
- Will this judge be inclined to continue a trial date upon the mutual request of the attorneys or parties?
- Does this judge make himself available for informal conferences with counsel to assist in resolving procedural or discovery issues?

- Does this judge offer early settlement conferences and encourage mediation or other settlement options?
- Is the judge "defense oriented" or "plaintiff oriented"?
- Is the judge personable? Does he engage counsel in a friendly dialogue at pre-trial hearings and status conferences?

You may not always be able to find all these things out about a judge, and there will be times you get no information. Sometimes you get stuck with an undesirable judge and sometimes you get lucky. Of course, when that occurs, the attorney should add the judge to the list for future reference, both for himself, and for other attorneys who may one day have a case assigned to the same judge and would want to know what you know.

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