

CCCBA ADVISORY AVOIDING ARBITRATOR BIAS

The obligation of the arbitrator at the time of the hearing is one of impartiality. The arbitrator should have no interest, financial or otherwise, in the outcome of the fee dispute.

The grounds for disqualification of a judge under Code of Civil Procedure section 170.1 are grounds for disqualifying an arbitrator. In brief summary, CCP §170.1 prevents a person from serving as an arbitrator if the person:

- (a) has personal knowledge of disputed facts or is likely to be a witness,
- (b) served a lawyer for one of the parties or practiced with one of the parties within the past two years, or
- (c) has a financial interest in a proceeding.

These specific disqualification factors are defined broadly in CCP § 170.1, which also provides for disqualification if the above factors apply to:

- (a) the arbitrator's or party's family, including in some instances relatives within the third degree, or
- (b) business associates such as partners, officers or directors.

Section 170.1 also provides for disqualification if "a person aware of the facts might reasonably entertain doubt that the [arbitrator] would be able to be impartial."

It has been the practice of many judges to apply broader recusal and disclosure standards in matters appearing before them than are required by statute.

The CCCBA will consider any challenges to the nominated arbitrator if it would appear that substantial rights of the parties may be affected or in the event that the arbitrator nominated appears to have an interest in the matter pending before the arbitrator.

If, you, as arbitrator, for any reason, may not be impartial as to each party, please disqualify yourself from any further consideration of the proceedings by notifying the Fee Arbitration Coordinator promptly. Please disclose any prior or present relationship to any party or participant in this proceeding and any other fact that may bear upon your disqualification as an arbitrator.

If, during the course of this proceeding, you, as arbitrator, become aware of facts upon which disqualification should occur, such disqualification should take place in as prompt a fashion as possible, with due regard for the rights of the parties in protection of their lawful rights and remedies.