

# Appellate Law

March 6, 2012

## Time to Disqualify Judge on Remand Not Triggered by Remittitur

Author: [Seth Reagan](#)

California Code of Civil Procedure section 170.6 allows prevailing appellants to disqualify the original trial court judge from presiding over a case after remand from the Court of Appeal by moving to disqualify that judge within “60 days.” But when does the 60-day clock start ticking? The Second District Court of Appeal recently answered this question in *Ghaffarpour v. Superior Court of Los Angeles County* (No. B234097), concluding that the 60 days begins to run from when the party first learns of the judicial assignment — not from when the Court of Appeal issues the remittitur.

Ghaffarpour had sued a hotel and its hired security agency for assault and other intentional torts in Los Angeles County Superior Court. After the trial court dismissed the case on statute of limitations grounds, Ghaffarpour prevailed on appeal, winning a reversal of the judgment and a remand to proceed with the case. The Court of Appeal issued its remittitur on August 26, 2010.

Nine months later, the trial court had still not scheduled further proceedings. When Ghaffarpour’s counsel contacted the court clerk on June 3, 2011 to ask about the status of the case, the clerk responded that the matter would soon be reassigned to the original judge. This was Ghaffarpour’s first notification that the same judge would be presiding. Seven days later, on June 10, 2011, Ghaffarpour moved to disqualify the judge for prejudice under Code of Civil Procedure section 170.6, which allows an appellant to file such a peremptory challenge within 60 days from the date of notification that the prior judge has been reassigned. The local rules for the Los Angeles County Superior Court, however, stated that the 60-day period began to run “from the date of issuance of the remittitur” by the court of appeal. Following that local rule, the trial court denied Ghaffarpour’s peremptory challenge as untimely. Ghaffarpour once again turned to the Court of Appeal for relief.

The Court of Appeal recognized that the state and local rules directly conflicted and could not be harmonized. Even though remanded matters are typically reassigned to the same judge, there is no guarantee that will happen. Thus, a remittitur does *not* serve as “constructive notice” that the previous judge will be reassigned. Holding otherwise “would permit a local rule to limit the time period in which a ... peremptory challenge can be asserted,” thereby thwarting the intention of the State Legislature and hindering the promotion of justice. Thus, the local rule was void.

*Ghaffarpour* makes clear that successful appellants in Los Angeles and throughout California have 60 days to disqualify a judge on remand,

### Newsletter Editors

Michael M. Berger  
Partner  
[Email](#)  
310.312.4185

Benjamin G. Shatz  
Partner  
[Email](#)  
310.312.4383

### Practice Area Links

[Practice Overview](#)  
[Members](#)

### Author



Seth Reagan  
Associate  
[Email](#)  
310.312.4183

which begins to run only on notification that the matter has in fact been reassigned to the previous judge — *not* simply upon issuance of the remittitur.

This newsletter has been prepared by Manatt, Phelps & Phillips, LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

ATTORNEY ADVERTISING pursuant to New York DR 2-101 (f)

Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.

© 2011 Manatt, Phelps & Phillips, LLP. All rights reserved.

[Unsubscribe](#)