

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
Heather Anderson, Senior Attorney, 415-865-7691

DATE: March 10, 2006

SUBJECT: Appellate Procedure: Certificate of Interested Entities and Persons (adopt Cal. Rules of Court, rule 14.5 and amend rules 56–59) (Action Required)

Issue Statement

The California Code of Judicial Ethics requires appellate justices to disqualify themselves whenever they have a financial interest in the proceeding or if they think a reasonable person aware of the facts would doubt their ability to be impartial. When an entity in which a justice has an interest, or a person with whom the justice has a relationship, is a named party or is the subject of a proceeding, a justice can easily determine whether to disqualify himself or herself. But an entity's or person's involvement in a proceeding may not be readily apparent from the names of the parties in an appeal or from the record or briefing in the appeal. This "hidden" involvement most commonly arises when a business entity that is the named party is actually owned by another entity or person and the justice has a financial interest in, or relationship with, that other entity or person.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective July 1, 2006, adopt new rule 14.5 and amend rules 56, 57, 58, and 59 to require that litigants in the Court of Appeal file a Certificate of Interested Entities and Persons. If a party is an entity, that party would be required to identify in the certificate any other entities or persons known to have a 10 percent or greater ownership interest in the party. In addition, all parties would identify in the certificate any other entity or person they know to have a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves under canon 3E. The text of the new and amended rules is attached at pages 5–9.

In addition, to gather input on the implementation and effect of these requirements, the committee recommends that the council seek public comment on these rules after they have been in effect for two years.

Rationale for Recommendation

The proposed Certificate of Interested Entities or Persons would help Court of Appeal justices identify entities or persons with “hidden” interests in the proceedings to assist the justices in determining whether to recuse themselves under the Code of Judicial Ethics. Canon 3E(4) of the California Code of Judicial Ethics requires appellate justices to disqualify themselves in any proceeding if, for any reason, they believe their recusal would further the interest of justice, they substantially doubt their capacity to be impartial, or they think that the circumstances are such that a reasonable person aware of the facts would doubt their ability to be impartial. Canon 3E(5)(d) further requires that appellate justices disqualify themselves whenever “[t]he appellate justice, or his or her spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party.” This canon generally defines “financial interest” as “ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars.” (*Ibid.*)

To help Court of Appeal justices identify these other entities or persons who have “hidden” interests in the proceedings, proposed rule 14.5 requires that each party to an appeal must serve and file a Certificate of Interested Entities or Persons (“certificate”) at the time “it files its first document in the Court of Appeal” (proposed rule 14.5(c)) and “must also include a copy of the certificate in its principal brief.” (*Ibid.*)

If a party is an entity, the certificate must list any other “entity or person that the party knows has an ownership interest of 10 percent or more in the party.” (proposed rule 14.5(d)(1).) All parties must also list “any other person or entity that has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves under canon 3E.” (proposed rule 14.5(d)(2).) If the party knows of no entity or person that is required to be disclosed under the rule, he or she must so state in the certificate. (proposed rule 14.5(d)(3).) Furthermore, if a party learns of changed or additional information that must be disclosed under rule 14.5, he or she “must promptly serve and file a supplemental certificate.” (proposed rule 14.5(e).)

Rules 56 through 59 would also be amended. Those rules, which apply to original proceedings, and to any review of Workers’ Compensation Appeals Board, Public Utilities Commission, Agricultural Labor Relations Board, and Public Employment Relations Board cases, would include a provision requiring parties in those proceedings to submit certificates required under rule 14.5.

The requirement for this proposed certificate is similar to the California Supreme Court’s requirement that parties, on the granting of review, file a *Certification of Interested Entities or Persons*. (See Internal Operating Practices and Procedures of the California Supreme Court, section IV. L.) Because the Supreme Court already has a similar requirement, new rule 14.5 would apply only in Court of Appeal proceedings.

Alternative Actions Considered

As discussed more fully below, the committee considered several alternatives as part of considering the comments received on this proposal, including keeping the disclosure requirements as circulated for public comment, but adding exceptions to address the specific concerns raised by the commentators and making discretionary any disclosure other than identifying an entity with a 10 percent or greater ownership interest in a party. For the reasons described below, the committee rejected these alternatives.

Comments From Interested Parties

The proposal was circulated for public comment during the spring 2005 comment period.¹ Nine individuals or organizations submitted comments on this proposal, three commentators agreed with the proposal, two agreed with the proposal only if modified, and four did not agree. The commentators who did not agree with the proposal expressed concern that the disclosures it required were overly broad and burdensome.

The version of the proposal that was circulated for comment used broader language to describe the disclosure requirements. Under that version, parties were required to identify: (1) persons or entities with a financial interest in the subject matter of the controversy or in a party to the proceeding and (2) persons or entities with an interest that could be “substantially affected” by the outcome of the proceeding. The commentators suggested that these provisions were vague and might result in parties’ having to provide much more information than necessary for an appellate justice to determine whether he or she is disqualified. While commentators acknowledged the laudable intent of the rule, they envisioned that in some cases—for example, those involving employee retirement systems—tens or even hundreds of thousands of people might be “substantially affected” by the outcome of the proceeding.

The committee concluded that these commentators raised important concerns about the scope of the disclosures that might be made under the proposal. To address these concerns, the committee considered keeping the disclosure requirements as circulated for public comment, but adding specific exceptions to the rule. The committee concluded, however, that this would result in the rule being long and difficult to understand. The committee also considered making discretionary any disclosure other than identifying an entity with a 10 percent or greater ownership interest in a party. This alternative was rejected, however, because of concerns that the parties might not provide justices with information relevant to their consideration of whether to recuse themselves.

Ultimately, the committee revised the proposal to scale back the required disclosure. Under the revised proposal only the following disclosures would be required: (1) a party who is an entity would be required to identify any other entity or person with a 10 percent

¹ Another proposal for a certificate of interested entities was circulated in the spring 2004 comment cycle. The proposal was significantly rewritten and recirculated in light of the substantive comments received during that circulation.

or more ownership interest in the party and (2) all parties would be required to disclose any person or entity that the party knows “has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves.” (Proposed rule 14.5(d)(2).) The committee believes that these revisions balance the commentators’ concerns about the scope and burden of the disclosure requirements with the goal of ensuring that justices receive all the information that parties are aware of that is likely to be important to the justices’ determination about whether to recuse themselves.

In addition, to help the committee assess the impact of these requirements and make an informed recommendation about whether they should be modified, the committee is recommending that the council seek public input on these rules after they have been in effect for a two-year period.

The full text of the comments and of the committee’s responses is attached at pages 12–26.

Implementation Requirements and Costs

Implementing this proposal may impose some additional costs on the courts, associated with notifying parties who fail to file required certificates. In addition, costs would be imposed on litigants who prepare and file the certificates. The extent of these costs is not known at this time.

Attachments

Rule 14.5 of the California Rules of Court is adopted and rules 56, 57, 58, and 59 are amended, effective July 1, 2006, to read:

1 **Rule 14.5. Certificate of Interested Entities or Persons**

2
3 **(a) Purpose and intent**

4
5 The California Code of Judicial Ethics states the circumstances under which an
6 appellate justice must disqualify himself or herself from a proceeding. The purpose
7 of this rule is to provide justices of the Courts of Appeal with additional information
8 to help them determine whether to disqualify themselves from a proceeding.

9
10 **(b) Definitions**

11
12 For purposes of this rule:

13
14 (1) “Certificate” means a Certificate of Interested Entities or Persons signed
15 by appellate counsel or an unrepresented party.

16
17 (2) “Entity” means a corporation, a partnership, a firm, or any other
18 association, but does not include a governmental entity or its agencies or a
19 natural person.

20
21 **(c) Serving and filing a certificate**

22
23 (1) Each party must serve and file a certificate at the time it files its first
24 document in the Court of Appeal. Each party must also include a copy of
25 the certificate in its principal brief. The certificate must appear after the
26 cover and before the tables.

27
28 (2) If a party fails to file a certificate as required under (1), the clerk must
29 notify the party by mail that the party must file the certificate within 15
30 days after the clerk’s notice is mailed and that failure to comply will
31 result in one of the following sanctions:

32
33 (A) If the party is the appellant, the court will strike the document or
34 dismiss the appeal; or

35
36 (B) If the party is the respondent, the court will strike the document or
37 decide the appeal on the record, the opening brief, and any oral
38 argument by the appellant.

39
40 (3) If the party fails to comply with the notice under (2), the court may
41 impose the sanctions specified in the notice.

1 **Rule 56. Original proceedings**

2
3 (a)–(b) ***

4
5 (c) **Contents of supporting documents**

6
7 (1) A petition that seeks review of a trial court ruling must be accompanied
8 by an adequate record, including copies of:

9
10 (A) The ruling from which the petition seeks relief;

11
12 (B) All documents and exhibits submitted to the trial court supporting
13 and opposing the petitioner’s position;

14
15 (C) Any other documents or portions of documents submitted to the trial
16 court that are necessary for a complete understanding of the case and
17 the ruling under review; and

18
19 (D) A reporter’s transcript of the oral proceedings that resulted in the
20 ruling under review.

21
22 (2) If a transcript under (1)(D) is unavailable, the record must include a
23 declaration by counsel:

24
25 (A) Explaining why the transcript is unavailable and fairly summarizing
26 the proceedings, including counsel’s arguments and any statement
27 by the court supporting its ruling; or

28
29 (B) Stating that the transcript has been ordered, the date it was ordered,
30 and the date it is expected to be filed, which must be a date ~~prior to~~
31 before any action requested of the reviewing court other than
32 issuance of a temporary stay supported by other parts of the record.

33
34 (3) A declaration under (2) may omit a full summary of the proceedings if
35 part of the relief sought is an order to prepare a transcript for use by an
36 indigent criminal defendant in support of the petition and if the
37 declaration demonstrates the petitioner’s need for and entitlement to the
38 transcript.

39
40 (4) In exigent circumstances, the petition may be filed without the documents
41 required by (1)(A)–(C) if counsel files a declaration that explains the
42 urgency and the circumstances making the documents unavailable and
43 fairly summarizes their substance.

1 (5) If the petitioner does not submit the required record or explanations or
2 does not present facts sufficient to excuse the failure to submit them, the
3 court may summarily deny a stay request, the petition, or both.
4

5 **(d)–(h) *****

6
7 **(i) Certificate of Interested Entities or Persons**

8
9 (1) Each party must comply with the requirements of rule 14.5 concerning
10 servicing and filing a Certificate of Interested Entities or Persons.

11
12 (2) The petitioner’s certificate must be included in the petition. The
13 certificates of the respondent and real party in interest must be included in
14 their preliminary opposition or, if no such opposition is filed, in their
15 return, if any. The certificate must appear after the cover and before the
16 tables.

17
18 (3) If a party fails to file a certificate as required under (1) and (2), the clerk
19 must notify the party by mail that the party must file the certificate within
20 10 days after the clerk’s notice is mailed and that failure to comply will
21 result in one of the following sanctions:

22
23 (A) If the party is the petitioner, the court will strike the petition;

24
25 (B) If the party is the respondent or the real party in interest, the court
26 will strike the document.

27
28 (4) If the party fails to comply with the notice under (3), the court may
29 impose the sanctions specified in the notice.

30
31
32 **~~(i)~~ (j) Attorney General’s amicus curiae brief**

33
34 ***

35
36 **~~(j)~~ (k) Notice to trial court**

37
38 ***

39
40 **~~(k)~~ (l) Responsive pleading under Code of Civil Procedure section 418.10**

41
42 ***

1 ~~(H)~~ (m) Costs

2
3 ***

4
5
6 **Rule 57. Review of Workers' Compensation Appeals Board cases**

7
8 (a)–(b) ***

9
10 **(c) Certificate of Interested Entities or Persons**

11
12 (1) Each party other than the board must comply with the requirements of
13 rule 14.5 concerning serving and filing a Certificate of Interested Entities
14 or Persons.

15
16 (2) The petitioner's certificate must be included in the petition and the real
17 party in interest's certificate must be included in the answer. The
18 certificate must appear after the cover and before the tables.

19
20 (3) If a party fails to file a certificate as required under (1) and (2), the clerk
21 must notify the party by mail that the party must file the certificate within
22 10 days after the clerk's notice is mailed and that failure to comply will
23 result in one of the following sanctions:

24
25 (A) If the party is the petitioner, the court will strike the petition;

26
27 (B) If the party is the real party in interest, the court will strike the
28 document.

29
30 (4) If the party fails to comply with the notice under (3), the court may
31 impose the sanctions specified in the notice.

32
33
34 **Rule 58. Review of Public Utilities Commission cases**

35
36 (a)–(b) ***

37
38 **(c) Certificate of Interested Entities or Persons**

39
40 (1) Each party other than the commission must comply with the requirements
41 of rule 14.5 concerning serving and filing a Certificate of Interested
42 Entities or Persons.

- 1 (2) The petitioner’s certificate must be included in the petition and the real
2 party in interest’s certificate must be included in the answer. The
3 certificate must appear after the cover and before the tables.
4
5 (3) If a party fails to file a certificate as required under (1) and (2), the clerk
6 must notify the party by mail that the party must file the certificate within
7 10 days after the clerk’s notice is mailed and that failure to comply will
8 result in one of the following sanctions:
9
10 (A) If the party is the petitioner, the court will strike the petition;
11
12 (B) If the party is the real party in interest, the court will strike the
13 document.
14
15 (4) If the party fails to comply with the notice under (3), the court may
16 impose the sanctions specified in the notice.
17
18

19 **Rule 59. Review of Agricultural Labor Relations Board and Public Employment**
20 **Relations Board cases**

21
22 (a)–(c) ***

23
24 **(d) Certificate of Interested Entities or Persons**

- 25
26 (1) Each party other than the board must comply with the requirements of
27 rule 14.5 concerning serving and filing a Certificate of Interested Entities
28 or Persons.
29
30 (2) The petitioner’s certificate must be included in the petition and the real
31 party in interest’s certificate must be included in the answer. The
32 certificate must appear after the cover and before the tables.
33
34 (3) If a party fails to file a certificate as required under (1) and (2), the clerk
35 must notify the party by mail that the party must file the certificate within
36 10 days after the clerk’s notice is mailed and that failure to comply will
37 result in one of the following sanctions:
38
39 (A) If the party is the petitioner, the court will strike the petition;
40
41 (B) If the party is the real party in interest, the court will strike the
42 document.
43

1
2
3

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

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Appellate Procedure: Certificate of Interested Entities and Persons
(adopt Cal. Rules of Court, rule 14.5; amend rules 56-59)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Saul Bercovitch Committee on Appellate Courts, The State Bar of California San Francisco	N	Y	<p>As currently written, proposed rule 14.5 would require disclosure of far more information than Court of Appeal justices need for recusal decisions under the California Code of Judicial ethics. Canon 3E(d)(d) of the Code requires justices to disqualify themselves whenever “[t]he appellate justice, or his or her spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party.” Cal. Code Judicial Ethics, Canon 3E(3)(d). The canon further provides that “[a] financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars.” <i>Id.</i></p> <p>Proposed rule 14.5’s reference to a “financial interest in the subject matter of the controversy or in a party to the proceeding” is quite vague and unnecessary in light of the requirements of the California Code of Judicial Ethics. For example, although the proposed rule clarifies that ownership of less than 10 percent of the stock of a “publicly held corporation” does not constitute a “financial interest in that entity,” the rule provides no numerical guidance as to other business organizations. Thus, by implication, the revised proposed rule might be interpreted to</p>	<p>This proposal is intended to assist Court of Appeal Justices in identifying not only financial interests in the proceeding that might be cause for their disqualification under 3E(5)(d), but also other interests that might be cause for their disqualification under 3E(4).</p> <p>The committee has modified the proposal to clarify that a party that is an entity is only required to identify other entities or parties with a 10 percent or greater ownership interest in that party.</p>

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(adopt Cal. Rules of Court, rule 14.5; amend rules 56-59)

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				<p>require identification of all individuals or entities that have any ownership interest at all in, for example, a privately held corporation or a partnership that is a party to a proceeding. This would be a particularly onerous disclosure requirement, which would not meaningfully assist Court of Appeal justices meet their obligations under Canon 3E(3)(d) of the Code.</p> <p>In addition, it is also unnecessarily burdensome to require parties to identify not just entities with a financial or other interest, but also persons with such interests. There are many examples of instances in which providing such a list will prove to be a substantial burden on the parties. For example, 28,000 Arthur Andersen employees had an interest in the government's prosecution of that firm, as did past employees whose names were tarnished by association with that firm after the federal government served its indictment. Yet, no substantial function relating to recusal would be served by requiring identification of all such employees.</p> <p>The proposed rule's reference to "[a]ny other kind of interest that could be substantially affected by the outcome of the proceeding" is also quite vague and over-inclusive. In a fraud case, for example, where a defendant acted with other entities that are not parties to the suit and that will not be liable for a judgment in the</p>	<p>As noted above, the committee modified its proposal to require entities to identify any other entity or person who has a 10 percent or greater ownership interest. Identifying persons who have a interest in a party to the proceeding should assist Court of Appeal justices in determining whether they must recuse themselves under canon 3E(5)(d) because this Canon also requires justices to recuse themselves if their "spouse, or a minor child residing in the household, has a financial interest."</p> <p>By restructuring subdivision (d), the parties are to disclose interests that, in the party's judgment, the justices should consider in determining</p>

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				<p>pending matter, is the defendant under an obligation to disclose such collaborators? If a trial court decision included credibility findings regarding particular witnesses, are the witnesses' reputational interests a "kind of interest that could be substantially affected by the outcome of the [appellate] proceeding"?</p> <p>The Committee appreciates that proposed rule 14.5 is similar to the certification requirement of the California Supreme Court. Unlike the California Supreme Court, however, the regular business of the Court of Appeal includes frequent emergency writ proceedings. In many cases, counsel will be unable to obtain the extensive information rule 14.5 appears to require in time for filing an emergency writ. Thus, the broad disclosure requirements of rule 14.5 could substantially hamper counsel in such proceedings.</p> <p>The Committee believes that the disclosure requirements of the Federal courts are better tailored to the recusal decisions that Court of Appeal justices must make under the California Code of Judicial Ethics. The Federal Courts of Appeals require all nongovernmental corporate parties to file a "Corporate Disclosure Statement" that identifies any parent corporation</p>	<p>whether to recuse themselves. This will focus the parties on relevant disclosures and allow the justices to be comfortable that parties will raise all interests the parties believe are important.</p> <p>As noted above, the committee has substantially narrowed the disclosure requirements. In addition, the committee has added a provision clarifying that the clerk must notify a party who fails to file a certificate that the court can strike what was filed or impose other sanctions if the certificate is not filed within 15 days. Only if the party fails to file the certificate within 15 days after this notice is sent will the court impose these sanctions.</p> <p>The Corporate Disclosure Statement required by the Federal Rules appears to address only a judge's potential ownership interests in a party. As noted above, this</p>

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				<p>and any publicly held corporation that owns 10 percent or more of its stock or states that there is no such corporation. Fed. R. App. Pro. 26.1. In almost all circumstances, this rule would provide sufficient information to assist Court of Appeal justices meet their obligations under the California Code of Judicial Ethics.</p> <p>Judges may also regard the involvement of a non-party insurer as relevant to their recusal decisions. Canon 3(E)(5) of the Code of Judicial Ethics, for example, provides, in part: "a proprietary interest of a policyholder in a mutual insurance company . . . is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest." The Committee believes that this issue should be dealt with explicitly, and recommends adoption of a rule similar to Local Rule 7.1-1 of the United States District Court for the Central District of California, which requires disclosure of an insurer "if it may be liable in whole or in part (directly or indirectly) for a judgment that may be entered in the action or for the cost of defense."</p> <p>Finally, concerns with respect to identifying persons or entities having "any other kind of interest that could be substantially affected by the outcome of the proceeding" – to the extent this language is aimed at requiring disclosure of</p>	<p>proposal is intended to assist Court of Appeal Justices in identifying not only financial interests in the proceeding that might be cause for their disqualification under 3E(5)(d), but also other interests that might be cause for their disqualification under 3E(4).</p> <p>The committee believes that parties who are aware of and believe such interests are relevant to a justice’s recusal decision will identify these entities under proposed subdivision (d)(2).</p> <p>The committee believes that parties who are aware of and believe such</p>

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				entities that are financial sponsors of litigation in which they have an ideological, political, or other interest – could be addressed through the adoption of a rule similar to United States Supreme Court rule 37(6). This rule requires disclosure of every person or entity “who made a monetary contribution to the preparation or submission of the brief.”	interests are relevant to a justice’s recusal decision will identify these entities under proposed subdivision (d)(2).
2.	Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District Los Angeles	A	N	Agree with proposed changes.	No response needed.
3.	Mr. David Ettinger Attorney Horvitz & Levy, LLP Encino	N	N	New rule 14.5 would require all parties to an appeal or writ petition to file a certificate that identifies “any entity or person” with “(A) A financial interest in the subject matter of the controversy or in a party to the proceeding; or [¶] (B) Any other kind of interest that could be substantially affected by the outcome of the proceeding.” The proposed disclosure requirement seems very broad and not well defined. The proposal does contain some limitations (e.g., (1) “A person or entity’s ownership of less than 10 percent of the stock of a publicly held corporation does not constitute a financial	As noted above, the committee has substantially narrowed the disclosure requirements.

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				<p>interest in that entity” and (2) “An interest that could be substantially affected by the outcome of the proceeding...does not arise solely because the entity or person is in the same industry or field of business as a party and because the case might establish a precedent that would affect that industry or field of business”). Unfortunately, these limitations do not adequately redress the problems of potentially onerous disclosure obligations or of uncertainties as to what needs to be disclosed. A few examples may serve to illustrate the dilemma that the proposal creates for appellate counsel and their clients:</p> <ol style="list-style-type: none"> 1. We recently filed a writ petition on behalf of a corporation to challenge a ruling which evidence showed, and we argued, could put the corporation out of business. Not only the corporation’s president, but its other officers and 300 employees certainly seem to be “person[s]” having “[a] financial interest in the subject matter of the controversy” and should be disclosed under the proposed rule. 2. In an appeal concerning insurance rate-making, all of the insurance company party’s policyholders are “person[s]” with “[a] financial interest in the subject matter of the controversy” and should be disclosed under the proposed rule. 	<p>The quoted language has been removed from the proposal.</p> <p>The quoted language has been removed from the proposal.</p>

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				<p>3. In litigation in which a large partnership is a party (a big law firm with hundreds of lawyers in multiple offices all over the world, for example), the proposed rule would require disclosure of every partner and, perhaps depending on the family and property laws of the jurisdiction in which they live, of the spouses of those partners. The same massive disclosure would seem necessary even if the partnership is a law firm and is not a party but is simply representing a party to the appeal under a contingency fee agreement.</p> <p>4. In a case concerning a California Coastal Commission limitation on development, there may be thousands of property owners who are “entit[ies] or person[s]” with an “interest that could be substantially affected by the outcome of the proceeding.”</p> <p>5. In a case involving the amount of pension benefits that must be paid by county retirement boards (see, e.g., <i>In re Retirement Cases</i> (2003) 110 Cal.App.4th 426), there could be thousands of retired and current public employees and their spouses who would be “person[s]” with “[a] financial interest in the subject matter of the</p>	<p>The committee has modified the proposal to clarify that a party that is an entity is only required to identify other entities or parties with a 10 percent or greater ownership interest in that party.</p> <p>The committee has modified the proposal to clarify that, as with persons or entities in the same field or business, a person or entity in the same regulatory status would not have an interest in the outcome of the proceeding simply because the case would establish precedent that would impact that status.</p> <p>The quoted language has been removed from the proposal.</p>

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				<p>controversy” and should be disclosed under the proposed rule.</p> <p>6. In a large class action lawsuit, identification of the thousands of class members would seem required by the proposed rule but may be impossible to do.</p> <p>7. In <i>Lockyer v. City and County of San Francisco</i> (2004) 33 Cal.4th 1055, the Supreme Court nullified approximately 4,000 same-sex marriages. Not only those 4,000 couples, but every other same-sex couple in California who wants to wed had an “interest that could be substantially affected by the outcome of the proceeding.</p> <p>In contrast to the current proposal in the Ninth Circuit Court of Appeals’ rather straightforward and more narrowly drawn corporate disclosure statement requirement. Under that rule, “Any nongovernmental corporate party to a proceeding in a court of appeals must file a</p>	<p>By restructuring subdivision (d), the parties are to disclose interests that, in the party’s judgment, the justices should consider in determining whether to recuse themselves. This will focus the parties on relevant disclosures and allow the justices to be comfortable that parties will raise all interests the parties believe are important.</p> <p>As noted above, the committee has modified the proposal to clarify that, as with persons or entities in the same field or business, a person or entity in the same regulatory status would not have an interest in the outcome of the proceeding simply because the case would establish precedent that would impact that status.</p> <p>The Corporate Disclosure Statement required by the Federal Rules appears to address only a judge’s potential ownership interests in a party. As noted above, this proposal is intended to assist Court</p>

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				<p>statement that identifies any parent corporation and publicly held corporation that owns 10 percent or more of its stock or states that there is no such corporation.”</p> <p>While we appreciate the need for a certain level of disclosure to help inform Court of Appeal justices regarding whether to disqualify themselves in a particular case, we believe the Ninth Circuit’s rule better balances the advantages of disclosure against the disadvantages of imposing a new, onerous obligation the full scope of which cannot readily be ascertained. We suggest that it might be worthwhile to ask the Ninth Circuit whether its disclosure rule has adequately informed its judges concerning their disqualification decisions.</p>	<p>of Appeal justices in identifying not only financial interests in the proceeding that might be cause for their disqualification under 3E(5)(d), but also other interests that might be cause for their disqualification under 3E(4).</p>
4.	<p>Ms. Deena C. Fawcett President California Appellate Court Clerks’ Association Sacramento</p>	AM	Y	<p>CACCA agrees with the proposed changes only if modified as follows.</p> <p><u>Rule 14.5 Certificate of interested entities or persons</u></p> <p>(c) Serving and filing a certificate</p> <p>Because many civil appeals do not become fully briefed due to abandonment or dismissal for procedural reasons, those appeals are not in a position to be reviewed by a justice. Therefore,</p>	<p>The committee considered this timing issue; in fact, the proposal circulated for comment in 2004 would have required that the certificate be filed with the briefs. If a party files a motion before briefing, however, the committee believes it is important that the justice or justices who might rule on that motion have the benefit of the information in the certificate.</p>

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				<p>a certificate would not be necessary at the filing of the first paper in the Court of Appeal. We recommend that the certificate be attached to each party’s brief. Since there are specific requirements for the contents of a brief under the rules, this would be an effective vehicle in which to police the requirement under the rules. Additionally, there are already mechanisms in place for handling non-conforming briefs.</p> <p>We recommend that the section read:</p> <p><u>“In any appeal in which an entity is a party, each party must serve and file a certificate in the Court of Appeal. Each party must include the certificate in their brief. The certificate must appear after the cover and before the tables.”</u></p>	
5.	Ms. Linda Gorham Court Manager Superior Court of San Francisco County San Francisco	A	N	Agree with proposed changes.	No response needed.
6.	Mr. Stephen V. Love (former) Executive Officer Superior Court of San Diego County San Diego	A	N	Agree with proposed changes.	No response needed.
7.	Mr. Lance E. Winters	AM	N	Agree with proposed changes only if modified.	Rule 14.5 would only apply in civil

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	Los Angeles			It appears that the certificate of interested parties would have to be filed in criminal cases, even though it would have no applicability. I would suggest modifying the rule to make clear that it only applies in civil cases (or non-criminal cases).	appeals. It is part of a chapter in the rules relating to civil appeals and there is no cross-reference to this rule in the rules for criminal appeals.
8.	Mr. Brian P. Worthington Esquire Chair, Appellate Court Committee of the San Diego County Bar Association San Diego	N	Y	<p>Last year, our committee provided comments regarding the previous proposal for this rule. In particular, we suggested the Judicial Council include a bright-line definition of “financial interest” similar to that found in Federal Rules of Appellate Procedure, rule 26.1.¹ The Judicial Council apparently incorporated our comment to the extent that the proposed rule now specifically provides in subdivision (b)(4) that “ownership of less than 10 percent of the stock of a publicly held corporation does not constitute a financial interest in that entity.”</p> <p>However, the proposed rule appears broader than the federal rule. While the proposed rule does set forth certain exceptions, we remain concerned the definition of “financial interest” is still not sufficiently explicit.</p>	This proposal is intended to assist Court of Appeal Justices in identifying not only financial interests in the proceeding that might be cause for their

¹ Rule 26.1 of the Federal Rules of Appellate Procedure reads: “Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10 percent or more of its stock or states that there is no such corporation.”

² Pursuant to the Internal Operating Practices and Procedures of the Fourth Appellate District, Division One, the court requests each party to file a Certificate of Interested Entities or Parties in a civil case in which a corporate entity or a partnership is a party.

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				<p>For example, would the proposed rule require disclosure of a law firm (e.g., trial counsel) that has a financial interest in the outcome of an appeal based on an attorney’s lien on the judgment? One well-known appellate firm regularly takes the position in cases before Division One of the Fourth Appellate District that disclosure must be made wherever the prevailing party on the appeal might be entitled to attorney’s fees as a result of the case.²</p> <p>Likewise, would the proposed rule require disclosure of a lien holder with an interest in a commercial property, which is the subject of dispute?</p> <p>In practice, the rule will place the burden on appellate counsel to fully advise the client as to what the rule requires, as the information is not typically within the knowledge of counsel. Therefore, a clear definition of “financial interest” in the definition section of the rule would help the appellate practitioner request the appropriate information from the client.</p>	<p>disqualification under 3E(5)(d), but also other interests that might be cause for their disqualification under 3E(4).</p> <p>By restructuring subdivision (d), the parties are to disclose interests that, in the party’s judgment, the justices should consider in determining whether to recuse themselves. This will focus the parties on relevant disclosures and allow the justices to be comfortable that parties will raise all interests the parties believe are important.</p>

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9.	Mr. Dean Zipser President Orange County Bar Association Irvine	N	Y	<p>Do not agree with proposed changes:</p> <p>Proposed Rule 14.5 would adopt a requirement that the parties to an appeal file a so-called “Certificate of Interested Entities or Persons” at the time the party files its first paper in the court of appeal in any appeal. The amendment to rules 56-59 would apply the same certificate requirement the original proceedings covered by those rules: (i) writs (Rule 56); (ii) review of Workers’ Compensation Appeals Board cases (Rule 57); (iii) review of PUC cases (Rule 58); and (iv) review of ALRB and Public Employment relations board cases (Rule 59).</p> <p>The purpose of the rule—a laudable one—is to provide courts of appeal justices with information so that they can determine whether to recuse themselves. The problem, in our view, is in the required content of the certificate. The certificate requires a party to list “any entity or person”—in addition to parties—who either has (i) a financial interest in the controversy or in a party to the proceeding (subd. (d)(1)(A)); (ii) “[a]ny other kind of interest that could be substantially affected by the outcome of the proceeding.” (Subd. (d)(1)(B)).</p> <p>There are problems with both aspects of this</p>	

³ Owning less than 10 percent of a publicly held company is defined by the rule not to constitute a financial interest in that entity.

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				<p>requirement.</p> <p>Subdivision (d)(1)(A) has two problems. First, there is no de minimus requirement for nonpublic entities.³ Thus, the rule would encompass every limited partner of a limited partnership; every shareholder of a closely-held corporation; and every beneficiary of a trust, for example. Perhaps this is good policy, but it could amount to an undue burden, beyond the benefit to the court.</p> <p>Second, the rule on its face is not limited to supplying information about parties on one’s own side of the case. This requires a party to list any entity or person “the party [filing the certificate] knows” to have a financial interest “in a party.” (Emphasis added.) So, for example, if in the course of a case, one party learned about the ownership interests of an adverse party, that party would be required to include in the certificate details about the adverse party. Presumably the rule is intended to require counsel submitting a form to list ownership interests only of the party or parties filing the certificate, but that is not what the rule says.</p> <p>Third, subdivision (d)(1)(B) is ambiguous, vague, and potentially overbroad in requiring a</p>	<p>The committee has modified the proposal to clarify that a party that is an entity is only required to identify other entities or parties with a 10 percent or greater ownership interest in that party</p> <p>The proposal has been modified to require parties who are entities to identify only those persons or entities with an ownership interest in that party.</p> <p>By restructuring subdivision (d), the parties are to disclose interests that,</p>

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				<p>party submitting the certificate to identify any entity or person who has “[a]ny other interest that could be substantially affected by the outcome of the proceeding.” What is “any other interest that could be substantially affected by the outcome of the proceeding”? The rule does not give any guidance except to say that such an interest “does not arise solely because the entity or person is in the same industry or field of business as a party and because the case might establish a precedent that would affect that industry or field of business.” In other words, one doesn’t have to list competitors who might be affected by precedent the case may set. But aside from this limited exception, the rule does not provide any guidance what the court would consider to be “[a]ny other kind of interest that could be substantially affected by the outcome of the proceeding.” For example, assume there was a zoning dispute. Would a neighbor who is not a party to the proceeding have a substantial interest? What about a CEQA challenge to a proposed development? This aspect of the proposed rule would require counsel submitting the form to make impossible judgments.</p>	<p>in the party’s judgment, the justices should consider in determining whether to recuse themselves. This will focus the parties on relevant disclosures and allow the justices to be comfortable that parties will raise all interests the parties believe are important.</p>