

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

VERONICA PULIDO,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

ANTONIO ALVARADO,

Real Party in Interest.

E055459

(Super.Ct.No. RFLRS038914)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. David A. Williams,
Judge. Petition granted.

Law Office of Kimberly R. Burke and Kimberly R. Burke for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

In this matter we have reviewed the petition and considered the record. Although invited to do so, real party in interest has not filed a response. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U. S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

As a general rule, a challenge of a judge is permitted under Code of Civil Procedure section 170.6¹ any time before the commencement of a trial or hearing. (*People v. Superior Court (Lavi)* (1993) 4 Cal.4th 1164, 1171 (*Lavi*).

The exceptions to the general rule, known as the 10-day/5-day rule, the master calendar rule, and the all purpose assignment rule, are explained in section 170.6, subdivision (a)(2), which states in part: “If the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to, or who is scheduled to try the cause, or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date. If directed to the trial of a cause with a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. . . . If directed to the trial of a civil cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance.”

¹ Statutory references are to the Code of Civil Procedure.

“Thus, for any given factual scenario, it must be determined whether any of section 170.6, subdivision [(a)](2)’s pertinent exceptions (the 10-day/5-day rule, the master calendar rule, or the all purpose assignment rule) are applicable, or whether the general rule (the commencement of trial rule) should apply.” (*Lavi, supra*, 4 Cal.4th at p. 1172.)

It is sometimes said that the standard of review is “abuse of discretion” (cases cited in *Grant v. Superior Court* (2001) 90 Cal.App.4th 518, 523), but usually the facts are clear and it is just a matter of applying the law.

Petitioner is also the petitioner in the underlying dissolution action. Postjudgment custody proceedings are currently pending. Petitioner appeared on January 11, 2012, for a continued hearing on her order to show cause, as well as a motion quashing service of subpoena on her counsel.

Here, petitioner alleges that she filed a peremptory challenge to Judge David A. Williams on the same day that he first presided over her case. Petitioner alleges that he was assigned to this case for all purposes. Therefore, petitioner’s peremptory challenge was timely.²

² Indeed, the challenge was timely under any scenario, with the exception of a master calendar assignment. The record does not show that a master calendar assignment was made in this case.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of San Bernardino County to set aside its order denying petitioner's motion for disqualification of Judge David A. Williams and to issue a new order granting the motion.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

The previously ordered stay is hereby lifted.

Each party to bear their own costs.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
Acting P. J.

We concur:

HOLLENHORST
J.

McKINSTER
J.