

1. AMICA MUT. INS. CO. v. PAPEZ, ET AL., 24CV0522**(A) Motion to Strike Defendant Jacobs' CCP 170.6 Motion****(B) Motion to Strike Defendant Jacobs' Cross-Complaint****Motion to Strike Defendant Jacobs' CCP 170.6 Motion**

On June 13, 2025, defendant and cross-defendant Thomas Papez ("Papez") filed a motion to strike defendant and cross-complainant Jeffrey Jacobs' ("Jacobs") Code of Civil Procedure ("CCP") section 170.6 challenge of Judge Leanne Mayberry. Jacobs filed his opposition thereto on June 27, 2025. Papez's reply brief was filed July 3, 2025.

Papez asserts that Jacobs' 170.6 challenge was untimely because Jacobs appeared in the action 10 months before he filed the challenge and, as a result, the challenge must be set aside. Jacobs does not address this issue in his opposition. Instead, he asserts that because Papez's default was entered on Jacobs' cross-complaint the day before the motion to strike was filed, Papez has no standing to file any pleadings in the case.

The relevant procedural history is as follows. A complaint in interpleader was filed by plaintiff Amica Mutual Insurance Company on March 11, 2024, and was assigned to Judge Gary Slossberg in Dept. 9 of the Cameron Park Branch. Jacobs filed his answer, along with a cross-complaint against Papez, on January 10, 2025. Papez filed a 170.6 challenge to Judge Slossberg on April 21, 2025, which was granted on April 30, 2025. The case was reassigned to Judge Leanne Mayberry in Dept. 4 of the South Lake Tahoe Branch that same day. Notice of the reassignment was mailed to the parties on April 30, 2025. Jacobs filed his 170.6 challenge to Judge Mayberry on May 15, 2025. On May 16, 2025, the challenge to Judge Mayberry was granted and the case was reassigned to Judge Michael McLaughlin in Dept. 3 of the South Lake Tahoe Branch.

Initially, Jacobs asserts that Papez is precluded from moving to strike the 170.6 challenge because the motion was filed after Papez's default was entered on the cross-complaint. It is noteworthy that, despite the fact Papez has not yet filed an answer to

the complaint in interpleader, the plaintiff has not taken his default. Papez's default has only been entered with respect to Jacobs' cross-complaint. It is well-settled that where there is both a complaint and a cross-complaint there are actually two separate actions pending and the issues joined upon the cross-complaint are completely severable from the issues of the original complaint and answer. (*Schrader v. Neville* (1949) 34 Cal.2d 112, 114; *Douglas v. Superior Court* (1949) 94 Cal.App.2d 395, 398.) As a result, while the entry of default on the cross-complaint puts Papez "out of court" so far as the cross-complaint is concerned and precludes him from making any motion or other pleading relating to the cross-complaint unless the default is set aside (*Title Insurance etc. Co. v. King etc. Co.* (1912) 162 Cal. 44, 46; see *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385), it does not bar him from participating in the litigation concerning the complaint. The fact that Papez's default was taken on the cross-complaint does not preclude him from moving to strike the peremptory challenge of Judge Mayberry because the challenge is related to the complaint, as well as the cross-complaint, which are separate and distinct. (*Ibid.*)

As far as the timeliness of Jacobs' challenge to Judge Mayberry, the court finds that the challenge was timely. CCP section 170.6(a)(2) requires that, in a civil case where a judge has been assigned for all purposes, a peremptory challenge must be made within 15 days after notice of the assignment. Judge Mayberry was assigned to the case for all purposes on April 30, 2025. Notice of the assignment was mailed to the parties that same day. Jacobs' challenge to Judge Mayberry was filed on May 15, 2025, fifteen days after the notice, and was timely.

Papez argues that Jacobs only had until January 26, 2025, to challenge Judge Mayberry because he first appeared in the case on January 10, 2025. This begs the question: How can a party challenge a judge assigned to a case when the judge has yet to be assigned? Of course, the question is rhetorical. Jacobs' time to challenge Judge

Mayberry could not have commenced until notice of reassignment of the case to Judge Mayberry was mailed on April 30, 2025.

Jacob's 170.6 challenge to Judge Mayberry was timely. Papez's motion to strike the 170.6 challenge is denied.

Motion to Strike Defendant Jacobs' Cross-Complaint

On June 13, 2025, Papez filed a motion to strike Jacobs' cross-complaint on the grounds the claims asserted in the cross-complaint were previously litigated and resolved in favor of Papez in another case involving both parties (22CV0891). Jacobs opposes the motion on the basis that Papez's default was entered on the cross-complaint the day before the motion was filed and, as a result, Papez has no standing to file any pleadings in the case.

The cross-complaint was filed on January 10, 2025, and, according to the proof of service filed June 12, 2025, it was personally served on Papez on May 8, 2025. Accordingly, Papez's responsive pleading to the cross-complaint was due on or before June 9, 2025, which is 30 days after personal service of the cross-complaint. (CCP § 432.10.) Jacobs filed a request for entry of default on June 12, 2025, and Papez's default was entered on the cross-complaint on that same day. (CCP § 585(e).) To date, Papez has not moved the court to set aside the default.

Once a default is entered on a cross-complaint, the cross-defendant is "out of court" and cannot take any further steps in relation to the cross-complaint until the default is set aside in a proper proceeding. (*Title Insurance etc. Co. v. King etc. Co.* (1912) 162 Cal. 44, 46; see *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385.) Accordingly, Papez was barred from filing any motions directed at the cross-complaint from the date of entry of default on June 12, 2025. As a result, the motion to strike the cross-complaint is denied.

TENTATIVE RULING # 1: (A) THE MOTION TO STRIKE DEFENDANT JACOBS' CCP 170.6 MOTION IS DENIED; (B) THE MOTION TO STRIKE DEFENDANT JACOBS' CROSS-COMPLAINT IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE COURT DAY PRECEDING THE DATE THE MATTER IS SET ON THE LAW AND MOTION CALENDAR. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.