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Cal Code Civ Proc § 640

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§ 640. Designation of referees

- (a) The court shall appoint as referee or referees the person or persons, not exceeding three, agreed upon by the parties.
- (b) If the parties do not agree on the selection of the referee or referees, each party shall submit to the court up to three nominees for appointment as referee and the court shall appoint one or more referees, not exceeding three, from among the nominees against whom there is no legal objection. If no nominations are received from any of the parties, the court shall appoint one or more referees, not exceeding three, against whom there is no legal objection, or the court may appoint a court commissioner of the county where the cause is pending as a referee.
- (c) Participation in the referee selection procedure pursuant to this section does not constitute a waiver of grounds for objection to the appointment of a referee under [Section 641](#) or [641.2](#).

History

Enacted 1872. Amended Stats 1913 ch 166 § 1; Stats 1933 ch 744 § 109; Stats 1951 ch 1737 § 95, operative January 1, 1952; Stats 1975 ch 1240 § 6, operative July 1, 1976; [Stats 2000 ch 644 § 3 \(AB 2912\)](#).

▼ Annotations

Notes

- ⬇ Derivation:
- ⬇ Amendments:
- ⬆ Derivation:

↑ Amendments:

1913 Amendment:

(1) Substituted “the person” for “any person” in the first sentence; and (2) added “; provided, that in any action brought under title VII of part III of this code, if the plaintiff is the state, a county, city and county, or any incorporated city or town, or a municipal water district, the referees are not required to be residents of the county in which the action or proceeding is triable” at the end of the second sentence; and (3) added the third sentence.

1933 Amendment:

Added “or justice” after “judge” in the second sentence.

1951 Amendment:

Substituted “or judge” for “judge, or justice” in the second sentence.

1975 Amendment:

Deleted (1) “; provided, that in any action brought under Title 7 of Part 3 of this code, if the plaintiff is the State, a county, city and county, or any incorporated city or town, or a municipal water district, the referees are not required to be residents of the county in which the action or proceeding is triable” at the end of the second sentence; and (2) the former third sentence which read: “Nothing herein contained shall be construed as repealing any law of this State giving jurisdiction to the State Railroad Commission to ascertain the just compensation which must be paid in eminent domain proceedings.”

2000 Amendment:

(1) Added subdivision designations (a) and (b); (2) substituted “The court shall appoint as referee or referees” for “A reference may be ordered to” in subd (a); (3) in subd (b), (a) substituted “on the selection of the referee or referees, each party shall submit to the court up to three nominees for appointment as referee and the court shall” for “, the court or judge must”; (b) substituted “from among the nominees against whom there is no legal objection” for “who reside in the county in which the action or proceeding is triable, and”; (c) at the beginning of the last sentence, added “If no nominations are received from any of the parties, the court shall appoint one or more referees, not exceeding three,” (d) substituted “court may appoint” for “reference may be made to” in the last sentence; and (4) added subd (c).

Commentary

Law Revision Commission Comments:

1975—

The portion of Section **640** relating to the residence of referees in eminent domain proceedings is deleted because it serves no useful purpose and tends unnecessarily to complicate eminent domain law. The last sentence is deleted as unnecessary. See [Cal. Const., Art XII, § 23a](#) and [Pub. Util. Code §§ 1401–1421](#).

Notes to Decisions

↓ 1. Generally

↓ 2. Applicability

↓ 3. Requirements

↓ 4. Objection to Appointment

↑ 1. Generally

Power of referee to report is unaffected by his prior resignation of office of court commissioner. [Jackson v. Puget Sound Lumber Co. \(Cal. Dec. 20, 1898\)](#), 123 Cal. 97, 55 P. 788, 1898 Cal. LEXIS 991.

There are significant differences between a judicial reference and a contractual arbitration. A reference by the trial court involves the sending of a pending action or proceeding, or some issue raised therein, to a referee for hearing, determination, and report back to the court. A general reference occurs where the court, with the

consent of the parties, directs a referee to try any or all of the issues in the action. The court appoints the referee, although the person chosen may be the result of the parties' agreement. The hearing before a referee is conducted in the same manner as it would before a court under the rules of evidence applicable to judicial proceedings. In the case of a general reference, the referee must prepare a statement of decision which stands as the decision of the court and is reviewable in the same manner as if the court had rendered it. [Sy First Family Ltd. Partnership v. Cheung \(Cal. App. 4th Dist. Mar. 29, 1999\)](#), 70 Cal. App. 4th 1334, 83 Cal. Rptr. 2d 340, 1999 Cal. App. LEXIS 258.

Law governing references accepts attorneys who have never been judges as qualified referees; a judicial reference provision in a home sales contract was not unenforceable because it allowed such persons to be referees. [Woodside Homes of California, Inc. v. Superior Court \(Cal. App. 4th Dist. Feb. 28, 2003\)](#), 107 Cal. App. 4th 723, 132 Cal. Rptr. 2d 35, 2003 Cal. App. LEXIS 484.

↑ 2. Applicability

In an action arising out of a property dispute between tenants in common, there was no statutory authorization for the procedure employed by the court, under which a court commissioner heard all the evidence on everything at issue without making findings, and then returned the record to the court for the purpose of making the decision. The procedure had the effect of denying defendant, who objected to it, her right to a decision on the controverted facts from the judge who heard the evidence. The court did not indicate whether it intended the commissioner to act as a commissioner ([CCP § 259\(b\)](#)), as a referee ([CCP § 640](#)), or as a temporary judge ([CCP § 259\(e\)](#)) Because the reference order did not require the commissioner to "make and report findings," the order could not be construed as a reference to him in his capacity as commissioner. Neither could it be upheld on the grounds the commissioner was acting as a referee, since that type of reference ([CCP § 639](#)), does not permit referral to all of the issues involved in the action. The reference could not be upheld on the grounds the commissioner was acting as a temporary judge, since the parties did not stipulate to have the commissioner try the case. [Badgley v. Van Upp \(Cal. App. 1st Dist. Nov. 22, 1993\)](#), 20 Cal. App. 4th 218, 24 Cal. Rptr. 2d 406, 1993 Cal. App. LEXIS 1166, modified, ([Cal. App. 1st Dist. Dec. 17, 1993](#)), 1993 Cal. App. LEXIS 1270.

↑ 3. Requirements

It was not required that referees be sworn, under former statute concerning references. [Sloan & Rhodes v. Smith \(Cal. Oct. 1, 1853\)](#), 3 Cal. 406, 1853 Cal. LEXIS 103.

If this section be considered as requiring that a referee be a resident of the county where the cause is tried, then former CCP §§ 714, 715 (see now [CCP §§ 708.110, 708.170](#)), authorizing appointment of a referee in supplementary proceedings but exempting the judgment debtor from attending an examination out of the county wherein he resides or has his place of business, must be considered as enlarging the power to appoint a time and place in another county for such examination and to appoint a referee who is not a resident of the county in which judgment was recovered and an order of arrest made. [In re Application of Drew \(Cal. May 13, 1922\)](#), 188 Cal. 717, 207 P. 249, 1922 Cal. LEXIS 473.

↑ 4. Objection to Appointment

Although a husband in a dissolution proceeding claimed that an order appointing a referee was invalid under the version of [CCP § 640](#) in effect in 1999, as well as under [CCP § 643](#), he did not raise either ground until his opposition to his former wife's motion for sanctions and had done nothing to timely cure the alleged defects. Accordingly, he had waived those objections on appeal. [In re Marriage of Michaely \(Cal. App. 2d Dist. Apr. 16, 2007\)](#), 150 Cal. App. 4th 802, 59 Cal. Rptr. 3d 56, 2007 Cal. App. LEXIS 709, cert. denied, ([U.S. Jan. 22, 2008](#)), 552 U.S. 1166, 128 S. Ct. 1123, 169 L. Ed. 2d 950, 2008 U.S. LEXIS 1153.

Research References & Practice Aids

Cross References:

Court commissioner: [CCP § 259](#).

Number of referees who must meet and act: [CCP § 1053](#).

Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 32 "Contractual Arbitration: Agreements And Compelling Arbitration"](#).

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 38 "Reference"](#).

[Cal. Points & Authorities \(Matthew Bender\) ch 201 "Reference And Referees" § 201.12.](#)

[Cal. Torts \(Matthew Bender\), § 91.03.](#)

[Cal. Torts \(Matthew Bender\), §§ 93.02, 93.03, 93.05, 93.06.](#)

[Cal. Legal Forms, \(Matthew Bender\) § 30B.204.](#)

2 Witkin Procedure (5th ed) Courts §§ 346, 347, 350.

6 Witkin Procedure (5th ed) Proceedings Without Trial §§ 3.

Practice Guides

Matthew Bender® Practice Guide: [California Contract Litigation, 5.14.](#)

Hierarchy Notes:

[Cal Code Civ Proc Pt. 2, Title 8, Ch. 6](#)

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