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CALIFORNIA HORSE RACING BOARD

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CHRB ADVISORY

AUGUST 5, 2009

**STATEMENT BY KIRK BREED, EXECUTIVE DIRECTOR OF THE CALIFORNIA
HORSE RACING BOARD, CONCERNING A REQUEST BY A HORSE OWNER
FOR RECUSAL OF A STEWARD ASSIGNED TO DEL MAR**

SACRAMENTO, CA – On Friday, July 24, 2009, California Horse Racing Board Licensed Owner Martin Wygod and his attorney requested to meet with the Stewards assigned to the Del Mar Thoroughbred Club race meet. Owner Wygod presented a letter, addressed to the Stewards, wherein he requested Steward Ingrid Fermin to recuse herself from any race in which a horse of his was running, but stated no factual basis for the request. The letter did refer to California Code of Civil Procedure section 170.1, which generally addresses disqualification of a judge for cause. This section was not applicable.

Steward Fermin considered the request and informed Owner Wygod she would not recuse herself from adjudicating races in which his horses ran. Steward Fermin did indicate she would revisit his request if circumstances warranted. Moreover, arrangements were made for a fourth Steward to be in the Stewards Stand during the running of the race. The race ran without incident and, therefore, the question of recusal was rendered moot.

Pursuant to Rule 1546 of the California Horse Racing Board, all complaints against Stewards are to be made in writing to the Executive Director of the Board and signed by the complainant. In addressing his letter to the assigned Stewards to the Del Mar Thoroughbred Club race meet, Owner Wygod did not adhere to the dictates of Rule 1546. Consequently, his request should not have been considered by the Stewards assigned to the Del Mar Thoroughbred Club race meet.

The referenced code section and rule are attached.

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CHRB Rule 1546 (Complaints Against Officials)

Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Board by the stewards together with a report of the action taken or the recommendation of the stewards. Complaints against any steward shall be made in writing to the Executive Director of the Board and signed by the complainant. NOTE: Authority cited: Sections 19420 and 19440, Business and Professions Code. Reference: Sections 19420, 19440 and 19510(c), Business and Professions Code. HISTORY: 1. Amendment filed 6-7-94; effective 7-7-94.

California Code of Civil Procedure Section 170.1:

170.1. (a) A judge shall be disqualified if any one or more of the following is true:

(1) (A) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(B) A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) (A) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

(B) A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(i) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law.

(ii) A lawyer in the proceeding was associated in the private practice of law with the judge.

(C) A judge who served as a lawyer for or officer of a public agency that is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) (A) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

(B) A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(i) A spouse or minor child living in the household has a financial interest.

(ii) The judge or the spouse of the judge is a fiduciary who has a financial interest.

(C) A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) (A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.

(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

(B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) (A) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The matter before the judge includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral.

(iii) The judge directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the judge has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service.

(iv) The judge will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the judge, and among those available for selection is an individual or entity with whom the judge has the arrangement, with whom the judge has previously been employed or served, or with whom the judge is discussing or has discussed the employment or service.

(B) For the purposes of this paragraph, all of the following apply:

(i) "Participating in discussions" or "has participated in discussion" means that the judge solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral or responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a judge's response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

(ii) "Party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

(iii) "Dispute resolution neutral" means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.