

Elon Musk's lawyers succeed in challenge to remove OpenAI case judge

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The California judge presiding over Elon Musk's lawsuit against OpenAI and its CEO, Sam Altman, has removed himself from the case. Judge Ethan Schulman on Monday sustained a challenge from Musk's lawyers, which cited a California state law that allows plaintiffs and defendants to remove a judge they believe cannot grant an impartial trial. The law, known as California Code of Civil Procedure 170.6, does not require the person issuing the challenge to provide any factual basis for their claim that the judge is prejudiced against them. Each side in a case gets one such peremptory challenge, which is granted as long as it is filed with correct language and within a certain time frame. Lawyers for Altman and Musk did not respond to requests for comment. The judge's disqualification is the latest turn for the controversial case, which is already based on fairly untested legal arguments and pits two of the most influential men in tech against each other. In March, Musk filed suit against Altman, his former OpenAI co-founder, alleging that the ChatGPT maker had breached a "founding agreement" to work for the betterment of humanity and instead pursued private commercial success. The suit has been moving through the California court system in the months since, with Schulman ruling in late April that it should be designated a complex civil litigation – meaning that a single judge would hear the case rather than a jury. That designation makes Schulman's disqualification even more consequential, since CBS News reports that he is one of only two judges in San Francisco currently assigned to hear complex cases. Musk's suit alleges that Altman took the original mission of OpenAI to create a non-profit company that widely shared its technology with the public, and instead closed off its models and took investment deals with Microsoft that turned it into a largely for-profit entity currently valued at about \$80bn. Altman and OpenAI have countered that there was no such "founding agreement" as Musk claims and accused him of professional jealousy over the company's success since his departure. The California code on disqualifying judges is different than what might be cause for recusal at a federal level. There are a wide variety of reasons that a judge may disqualify themselves from legal proceedings, according to University of Richmond law professor Carl Tobias. A judge or their family could have financial conflict, such as shares in a company, or there could be a personal or professional entanglement that would bias them in a case. If a judge expressed prejudice against a party in the case during another trial or in a public forum, that would also be grounds to disqualify. While California's state law also allows for challenging a judge for causes similar to those at a state level, the code on disqualifications provides a much easier way to remove a judge in search of one that may be more favorable. Musk and Altman founded OpenAI together in 2015, but Musk left the company three years later amid an internal power struggle and disagreements over its direction. Musk has since launched his own rival artificial intelligence company, xAI. The case is now set to be reassigned to a new judge, and previous dates scheduled for it have been vacated.