

Enrolled
Senate Bill 807

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to disqualification of judges; amending ORS 14.260.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 14.260 is amended to read:

14.260. (1) Any party to or any attorney appearing in any cause, matter or proceeding in a circuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay. **Except as provided in subsection (7) of this section,** no specific grounds for the belief need be alleged. The motion shall be allowed unless the judge moved against, or the presiding judge for the judicial district, challenges the good faith of the affiant and sets forth the basis of the challenge. In the event of a challenge, a hearing shall be held before a disinterested judge. The burden of proof is on the challenging judge to establish that the motion was made in bad faith or for the purposes of delay.

(2) The affidavit shall be filed with the motion at any time prior to final determination of the cause, matter or proceedings in uncontested cases, and in contested cases before or within five days after the cause, matter or proceeding is at issue upon a question of fact or within 10 days after the assignment, appointment and qualification or election and assumption of office of another judge to preside over the cause, matter or proceeding.

(3) A motion to disqualify a judge may not be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding. A motion to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve in a county other than the county in which the judge or judge pro tem resides may not be filed more than five days after the party or attorney appearing in the cause receives notice of the assignment.

(4) In judicial districts having a population of 200,000 or more, the affidavit and motion for change of judge shall be made at the time and in the manner prescribed in ORS 14.270.

(5) In judicial districts having a population of 100,000 or more, but less than 200,000, the affidavit and motion for change of judge shall be made at the time and in the manner prescribed in ORS 14.270 unless the circuit court makes local rules under ORS 3.220 adopting the procedure described in this section.

(6) A party or attorney may not make more than two applications in any cause, matter or proceeding under this section.

(7)(a) If a party, attorney, law firm, district attorney’s office, defense consortium or public defender’s office files a motion or series of motions under subsection (1) of this section or ORS 14.270 against an elected judge that effectively denies the judge assignment to a

criminal or juvenile delinquency docket in any county within the judge's judicial district, the judge moved against may request a hearing before a disinterested judge. For a hearing under this subsection, the disinterested judge may not be from the same judicial district as the judge moved against. The party, attorney, law firm, district attorney's office, defense consortium or public defender's office may file a supplemental affidavit providing specific grounds for a reasonable good faith belief that the judge lacks fairness or impartiality.

(b) The disinterested judge shall make an objective inquiry as to:

(A) Whether the motion or series of motions effectively denies the judge assignment to a criminal or juvenile delinquency docket in any county within the judge's judicial district; and

(B) Whether there is a reasonable good faith belief that the judge lacks fairness or impartiality. The burden of proof under this subparagraph is on the party, attorney, law firm, district attorney's office, defense consortium or public defender's office filing the motion under subsection (1) of this section or ORS 14.270.

(c) If the inquiry establishes that the motion or series of motions does not effectively deny the judge assignment to a criminal or juvenile delinquency docket, the motion shall be decided under subsection (1) of this section.

(d) If the inquiry establishes that the motion or series of motions effectively denies the judge assignment to a criminal or juvenile delinquency docket and establishes a reasonable good faith belief that the judge lacks fairness or impartiality, the motion shall be granted.

(e) If the inquiry establishes that the motion or series of motions effectively denies the judge assignment to a criminal or juvenile delinquency docket and does not establish a reasonable good faith belief that the judge lacks fairness or impartiality, the motion shall be denied.

(f) The Chief Justice may issue rules to implement this subsection.

Passed by Senate April 10, 2023

Received by Governor:

Repassed by Senate June 16, 2023

.....M.,....., 2023

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2023

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Rob Wagner, President of Senate

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Tina Kotek, Governor

Passed by House June 14, 2023

Filed in Office of Secretary of State:

.....M.,....., 2023

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Dan Rayfield, Speaker of House

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Secretary of State