

May 1, 2023

Support for SB 807 (*Disqualification of Judges*)

Dear Chair Kropf, Vice-chairs Wallan and Andersen, and Committee Members:

Please let me introduce myself. I am an Oregon Senior Circuit Court Judge. After graduating from Willamette Law School in 1978, I returned to my hometown of Lakeview and practiced law for 40 years, as Lake County District Attorney, in private practice including public defense, and starting in 2013 as an Oregon Circuit Court Judge.

My experience with a blanket disqualification by a district attorney is a perfect, but not unique, example of why we need to amend ORS 14.260 with Subsection (7) of SB 807.

Lake County has a single Circuit Court judge and is part of Twenty Sixth (26th) Judicial District composed of Klamath and Lake Counties. The Lakeview courthouse is about 90 miles from the Klamath courthouse.

In 2016, a former Klamath County Deputy District Attorney ran for Lake County District Attorney (DA) and was elected. She took office in 2017 and in May 2018 started filing a Motion to Disqualify me in all criminal cases.

The disqualification of the only resident judge in Lake County was extremely disruptive to the criminal processing of cases. All new criminal cases had to be handled by an out of county circuit court judge. Daily criminal matters were generally handled by video by Klamath County judges or judges assigned by the Oregon Judicial Department. Criminal matters that required judges to be in the courtroom required travel to Lakeview and generally an out of county circuit court judge was assigned to sit in Lake County at least one week every month. Scheduling was inconvenient and sometimes difficult for parties, attorneys, and victims. This effected the timely processing of cases.

There is a letter addressed to the Oregon Legislative Assembly entitled Retired Oregon Circuit Court and Appellate Judges Urge the Legislature to Pass SB 807. It will be filed with your judiciary committee before the hearing on this bill, scheduled for Monday, May 8. The number of retired judges urging the legislature to pass this bill has grown from 45 to 55 judges since the letter was submitted to the Senate Judiciary Committee. I agree with its content and specifically with the assertion that **the current process “does not provide a realistic opportunity for a judge to contest a disqualification.”** In consulting with other attorneys and judges, I was advised that based upon the statute, case law, and processes that if I challenged a disqualification I would not prevail. I did not contest any Motion to Disqualify.

Efforts were made to resolve the conflict including help from Oregon Judicial Department to no avail. Early in the process I was advised the problem was political. In the end this was true. About three months after the first Motion to Disqualify was filed, friends and supporters filed a Petition to Recall the District Attorney. Sufficient signatures were obtained and filed with the Secretary of State. Upon filing, the District

Attorney resigned. I do not know all the reasons why those signing the Petition supported the recall but believe the disqualification of the only elected judge and the adverse effects on Lake Circuit court were a significant factor.

Based on my dealings with many judges, the last thing any judge wants to do is sit on a case where the litigants do not believe the judge can be fair and impartial. **However, the removal of a judge from every case, regardless of the criminal defendant, the charges, the facts, or the victims, for months, years, or even decades (as is the case in Klamath County) is wrong without an open, transparent process that gives the judge – elected by the people - the opportunity to defend him or herself.**

Senate Bill 807 does not change the disqualification process set out in ORS 14.260 except where there are frequent disqualifications “which effectively deny the judge assignment to a criminal or juvenile delinquency docket...” Senate Bill 807 sets out a process to address this circumstance. I understand that the process provided in Subsection (7) of SB 807 is commonplace in other states and jurisdictions. This process promotes fairness and transparency for the party or lawyer filing the motion under ORS 14.260, for the judge and the courts, and for the people who elected the judge.

It is my opinion that the amendments are needed in Oregon and will improve the administration of justice.

Respectfully submitted,

s/ Robert F. Nichols Jr.

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