

May 8, 2023

Chair Kropf and House Judiciary Committee Members:

SB 807 is about fairness. I worked as a deputy district attorney in Josephine County from 1991 until I was appointed to the Josephine County Circuit Court bench in 2003. I was elected and reelected to that position until I retired in 2017. I then worked as a part-time pro tem judge at many courts across the state until the end of 2022.

The current statute, ORS 14.260(1), allows a party or the party's attorney in a particular case to file an affidavit stating that the "party or attorney **believes**" that they cannot have a "fair and impartial trial or hearing" in front of a specified judge. The statute says that "**no specific grounds for the belief need be alleged.**" A judge may challenge the motion to disqualify, but the judge has the burden of proving that "the motion was made in bad faith." This is virtually impossible. Accordingly, the judge invariably is disqualified from hearing the case in which the motion was filed.

Every judge is disqualified in some cases; the statute gives the benefit of the doubt to the party or party's attorney based on their good faith belief that the judge cannot be impartial **in that case.**

The situation is different when a district attorney or public defender disqualifies a judge from **every criminal case, without consideration of the facts, the defendant, the charges or the victim.** Blanket disqualification of a judge from hearing all criminal cases filed in the judge's county hampers the administration of justice. Several times I filled in as a judge at a county where a judge was categorically disqualified from all criminal cases by the district attorney. I was one of many judges called to fill in for the disqualified judge over the life of a case. When a case is handled by a different judge at every proceeding, the parties are forced to take a few steps backward in the process to be sure that the judge is fully familiar with the history of the case. This substantially slows down the case, wasting time and inconveniencing parties, witnesses, and the court process itself.

SB 807 solves this problem. If a DA or public defender files so many motions to disqualify a judge that it "effectively denies the judge's assignment to a criminal or juvenile delinquency docket," the disqualified judge would be able to request a hearing before a disinterested judge. The DA or public defender would be required to show the basis for the blanket disqualification. If the reviewing judge found "**a reasonable person would believe the judge lacks impartiality,**" the disqualification would stand. SB 807's review process provides independent oversight that is fair, transparent, and provides due process that balances the public interest in having their elected judge preside over criminal cases against the public interest of excluding a demonstrably biased judge. I urge you to support SB 807.

Respectfully submitted,

Michael Newman

Retired Josephine County Circuit Court Judge and former Deputy District Attorney.