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**HOUSE BILL 1305**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Walen, Irwin, and Jinkins

AN ACT Relating to notices of disqualification in courts of limited jurisdiction; amending RCW 3.34.110, 3.50.045, 35.20.175, 3.34.130, 3.50.090, and 3.66.090; and repealing RCW 3.20.100.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 3.34.110 and 2008 c 227 s 7 are each amended to read as follows:

(1) A district court judicial officer shall not preside in any of the following cases:

(a) In an action to which the judicial officer is a party, or in which the judicial officer is directly interested, or in which the judicial officer has been an attorney for a party.

(b) When the judicial officer ((~~or one of the parties~~)) believes that the parties cannot have an impartial trial or hearing before the judicial officer. ((~~The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of judicial officer is allowed each party in an action or proceeding.~~))

(c) When any party to or any attorney appearing in any action or proceeding has disqualified a judicial officer from hearing the matter, subject to these limitations:

(i) Notice of disqualification must be filed and called to the attention of the judicial officer before the judicial officer has made any discretionary ruling in the case.

(ii) In courts with only one resident judicial officer, the notice of disqualification must be filed not later than the day on which the case is called to be set for trial.

(iii) A judicial officer who has been disqualified under this subsection (1)(c) may decide such issues as the parties agree in writing or on the record in open court.

(iv) No party or attorney is permitted to disqualify more than one judicial officer in any matter under this subsection (1)(c).

(v) Even though they may involve discretion, the following actions by a judicial officer do not cause the loss of the right to file a notice of disqualification against that judicial officer: Arranging the calendar, setting a date for a hearing or trial, ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings under CrRLJ 3.2.1, arraigning the accused, and fixing bail.

(2) When a judicial officer is disqualified under this section, the case shall be heard before another judicial officer of the same county.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

**Sec.**  RCW 3.50.045 and 2008 c 227 s 9 are each amended to read as follows:

(1) A municipal court judicial officer shall not preside in any of the following cases:

(a) In an action to which the judicial officer is a party, or in which the judicial officer is directly interested, or in which the judicial officer has been an attorney for a party.

(b) When the judicial officer ((~~or one of the parties~~)) believes that the parties cannot have an impartial trial or hearing before the judicial officer. ((~~The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of judicial officer is allowed each party in an action or proceeding.~~))

(c) When any party to or any attorney appearing in any action or proceeding has disqualified a judicial officer from hearing the matter, subject to these limitations:

(i) Notice of disqualification must be filed and called to the attention of the judicial officer before the judicial officer has made any discretionary ruling in the case.

(ii) In courts with only one resident judicial officer, the notice of disqualification must be filed not later than the day on which the case is called to be set for trial.

(iii) A judicial officer who has been disqualified under this subsection (1)(c) may decide such issues as the parties agree in writing or on the record in open court.

(iv) No party or attorney is permitted to disqualify more than one judicial officer in any matter under this subsection (1)(c).

(v) Even though they may involve discretion, the following actions by a judicial officer do not cause the loss of the right to file a notice of disqualification against that judicial officer: Arranging the calendar, setting a date for a hearing or trial, ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings under CrRLJ 3.2.1, arraigning the accused, and fixing bail.

(2) When a judicial officer is disqualified under this section, the case shall be heard before another judicial officer of the municipality.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

**Sec.**  RCW 35.20.175 and 2008 c 227 s 10 are each amended to read as follows:

(1) A municipal court judicial officer shall not preside in any of the following cases:

(a) In an action to which the judicial officer is a party, or in which the judicial officer is directly interested, or in which the judicial officer has been an attorney for a party.

(b) When the judicial officer ((~~or one of the parties~~)) believes that the parties cannot have an impartial trial or hearing before the judicial officer. ((~~The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of judicial officer is allowed each party in an action or proceeding.~~))

(c) When any party to or any attorney appearing in any action or proceeding has disqualified a judicial officer from hearing the matter, subject to these limitations:

(i) Notice of disqualification must be filed and called to the attention of the judicial officer before the judicial officer has made any discretionary ruling in the case.

(ii) In courts with only one resident judicial officer, the notice of disqualification must be filed not later than the day on which the case is called to be set for trial.

(iii) A judicial officer who has been disqualified under this subsection (1)(c) may decide such issues as the parties agree in writing or on the record in open court.

(iv) No party or attorney is permitted to disqualify more than one judicial officer in any matter under this subsection (1)(c).

(v) Even though they may involve discretion, the following actions by a judicial officer do not cause the loss of the right to file a notice of disqualification against that judicial officer: Arranging the calendar, setting a date for a hearing or trial, ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings under CrRLJ 3.2.1, arraigning the accused, and fixing bail.

(2) When a judicial officer is disqualified under this section, the case shall be heard before another judicial officer of the municipality.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

**Sec.**  RCW 3.34.130 and 1996 c 16 s 1 are each amended to read as follows:

(1) Each district court shall designate one or more persons as judge pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a district judge or to serve as an additional judge for excess caseload or special set cases. The qualifications of a judge pro tempore shall be the same as for a district judge, except that with respect to RCW 3.34.060(1), the person appointed need only be a registered voter of the state. A district that has a population of not more than ten thousand and that has no person available who meets the qualifications under RCW 3.34.060(2)(a) ((~~or (b)~~)), may appoint as a pro tempore judge a person who has taken and passed the qualifying examination for the office of district judge as is provided by rule of the supreme court. A judge pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority.

(2) For each day that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the district judge in whose place the judge pro tempore serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: PROVIDED, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves:

(a) While a district judge is using sick leave granted in accordance with RCW 3.34.100;

(b) While a district court judge is disqualified from serving following the filing of ((~~an affidavit of prejudice~~)) a notice of disqualification;

(c) As an additional judge for excess case load or special set cases; or

(d) While a district judge is otherwise involved in administrative, educational, or judicial functions related to the performance of the judge's duties: PROVIDED, That the appointment of judge pro tempore authorized under subsection (2)(c) and (d) of this section is subject to an appropriation for this purpose by the county legislative authority.

(3) The legislature may appropriate money for the purpose of reimbursing counties for the salaries of judges pro tempore for certain days in excess of thirty worked per year that the judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (2) of this section. No later than September 1 of each year, each county treasurer shall certify to the administrator for the courts for the year ending the preceding June 30, the number of days in excess of thirty that any judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (2) of this section. Upon receipt of the certification, the administrator for the courts shall reimburse the county from money appropriated for that purpose.

**Sec.**  RCW 3.50.090 and 2000 c 55 s 1 are each amended to read as follows:

The presiding municipal court judge may designate one or more persons as judges pro tem to serve in the absence or disability of the elected or duly appointed judges of the court, subsequent to the filing of ((~~an affidavit of prejudice~~)) a notice of disqualification, or in addition to the elected or duly appointed judges when the administration of justice and the accomplishment of the work of the court make it necessary. The qualifications of a judge pro tempore shall be the same as for judges as provided under RCW 3.50.040 except that a judge pro tempore need not be a resident of the city or county in which the municipal court is located. Judges pro tempore shall have all of the powers of the duly appointed or elected judges when serving as judges pro tempore of the court. Before entering on his or her duties, each judge pro tempore shall take, subscribe, and file an oath as is taken by a duly appointed or elected judge. Such pro tempore judges shall receive such compensation as shall be fixed by ordinance by the municipality in which the court is located and such compensation shall be paid by the municipality.

**Sec.**  RCW 3.66.090 and 1984 c 258 s 49 are each amended to read as follows:

A change of venue may be allowed upon motion:

(1) Where there is reason to believe that an impartial trial cannot be had in the district or municipal court in which the action was commenced; or

(2) Where the convenience of witnesses or the ends of justice would be forwarded by the change.

When such change is ordered, it shall be to the district court of another district in the same county, if any, otherwise to the district court of an adjacent district in another county: PROVIDED, That where ((~~an affidavit of prejudice~~)) a notice of disqualification is filed against a judge of a municipal court the cause shall be transferred to another department of the municipal court, if one exists, otherwise to a judge pro tempore appointed in the manner prescribed by law. The court to which a case is removed on change of venue under this section shall have the same jurisdiction, either civil or criminal to hear and determine the case as the court from which the case was removed.

NEW SECTION. **Sec.**  RCW 3.20.100 (Change of venue—Affidavit of prejudice) and 2011 c 336 s 72, 1943 c 126 s 1, 1881 p 8 ss 2, 3, Code 1881 s 1938, & 1867 p 88 s 2 are each repealed.

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