

HOUSE BILL REPORT

SSB 5277

As Reported by House Committee On:
Judiciary

Title: An act relating to disqualification of judges.

Brief Description: Concerning disqualification of judges.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Pedersen, Darneille and Kuderer).

Brief History:

Committee Activity:

Judiciary: 3/22/17, 3/23/17 [DP].

Brief Summary of Substitute Bill

- Changes the terminology relating to disqualification of judges.
- Changes some of the rules governing the process of disqualification.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jenkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Audrey Frey (786-7289).

Background:

If a person who is a party or attorney in an action or proceeding in superior court believes that he or she cannot have a fair and impartial trial before the superior court judge assigned to the case, the person can file a motion and affidavit of prejudice to establish that the judge should be disqualified.

A judge who has been disqualified is prohibited from hearing the case, and the case will be transferred to another judge from a different department in the same court, a visiting judge, or another court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The rules governing the process of disqualification are as follows:

- In order to establish disqualification of a judge, a person must file a motion and affidavit of prejudice with the judge before the judge makes any ruling on a motion of either party and before the judge has made any discretionary rulings.
 - The following are not considered discretionary rulings: the arrangement of the calendar; the setting of an action, motion, or proceeding down for hearing or trial; the arraignment of the accused in a criminal action; and the fixing of bail.
 - In counties where there is only one resident judge, the motion and affidavit of prejudice must be filed no later than the day on which the case is called to be set for trial.
 - If the parties stipulate to agreement in writing, the judge can hear argument and rule upon any preliminary motions, demurrers, or other matters, even if an affidavit of prejudice has been filed.
 - No party or attorney is permitted to make more than one application to establish disqualification of a judge in any action or proceeding.
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Summary of Bill:

All references to a motion and affidavit of prejudice are replaced with references to a notice of disqualification.

The rules governing the process of disqualification are rephrased, and the following substantive changes are made:

- In addition to the judicial actions currently listed in statute (arranging the calendar, setting a date for a hearing or trial, arraigning the accused, and fixing bail), the list of judicial actions that may involve discretion but do not preclude filing a notice of disqualification is expanded to include: ruling on an agreed continuance; issuing an arrest warrant; presiding over criminal preliminary proceedings; and presiding over juvenile detention and release hearings.
 - A judge who has been disqualified may decide issues that the parties agree to on the record in open court, in addition to issues that the parties agree to in writing.
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Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is going to make a real difference for small counties. In counties where there is only one judge, if the judge is disqualified through an affidavit of prejudice, it can

really gum up the calendar because the judge cannot hear that one case, and another judge has to come in. For ministerial matters, such as an agreed trial continuance, this bill affords lawyers more of an opportunity to disqualify a particular judge.

This bill also clarifies what acts amount to disqualification and changes the name from "affidavit of prejudice" to "notice of disqualification." In order to disqualify a judge, lawyers often have to sign a declaration that says Judge A or B is prejudiced against the client. That can put lawyers in a tough spot because the lawyer often does not know the judge and may be swearing to something that might not be true. So, changing the name is another good step.

(Opposed) None.

Persons Testifying: Sean O'Donnell and Tom Parker, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.