

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 659

Short Title: Disqualification of Judges/Procedure.

(Public)

Sponsors: Senator Rucho.

Referred to: Judiciary I.

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A PROCEDURE FOR DETERMINING WHEN A JUDGE SHOULD
BE DISQUALIFIED FROM PRESIDING OVER A CASE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new
Article to read:

"Article 26A.

"Disqualification of Judges.

"§ 7A-295. Disqualification of judges.

(a) Whenever a motion is filed by a party to a civil or criminal proceeding to disqualify a judge for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in G.S. 15A-1223, the judge shall either disqualify himself or herself or request that the Chief Justice assign another judge to hear the motion. The Chief Justice may exercise discretion to determine whether to assign another judge from the same district, to assign a judge from an adjacent district, or to make any other assignment required by the interests of justice.

(b) If a district court judge disqualifies himself or herself, the judge shall enter an order of disqualification and request that the chief district court judge assign another judge to hear the case. If a superior court judge disqualifies himself or herself, the judge shall enter an order of disqualification and request that the senior resident superior court judge for the district assign another judge to hear the case.

(c) If a judge does not disqualify himself or herself and the Chief Justice assigns another judge to hear the motion pursuant to subsection (a) of this section, the judge hearing the motion shall determine whether there is sufficient basis for concluding that the challenged judge would be unable to perform the duties required in the case in an impartial manner. If the judge hearing the motion finds that there is sufficient basis for such a conclusion, the judge shall grant the motion and enter an order of disqualification for the challenged judge. If the judge hearing the motion finds that there is not sufficient basis for such a conclusion, the judge shall deny the motion and enter an order remanding the case back to the challenged judge. If, in denying a motion to disqualify, the judge finds that the motion was brought solely for the purpose of delay and without sufficient cause, the judge may in the interests of justice impose any appropriate sanction authorized by law.

(d) A denial of a motion to disqualify a judge is not immediately appealable and is only reviewable by the appellate division on appeal from a final judgment."

SECTION 2. G.S. 15A-1223 reads as rewritten:

"§ 15A-1223. Disqualification of judge.

(a) A judge on his own motion may disqualify himself or herself from presiding over a criminal trial or other criminal proceeding.



1 (b) A judge, on motion of the State or the defendant, must disqualify himself or herself
2 from presiding over a criminal trial or other criminal proceeding if ~~he~~ the judge is:

3 (1) Prejudiced against the moving party or in favor of the adverse party; or

4 (2) Repealed by Session Laws 1983 (Regular Session 1984), c. 1037, s. 6.

5 (3) Closely related to the defendant by blood or marriage; or

6 (4) For any other reason unable to perform the duties required of ~~him~~ the judge
7 in an impartial manner.

8 (c) A motion to disqualify must be in writing and must be accompanied by one or more
9 affidavits setting forth facts relied upon to show the grounds for disqualification.

10 (d) A motion to disqualify a judge must be filed no less than five days before the time
11 the case is called for trial unless good cause is shown for failure to file within that time. Good
12 cause includes the discovery of facts constituting grounds for disqualification less than five
13 days before the case is called for trial.

14 (e) A judge must disqualify himself or herself from presiding over a criminal trial or
15 proceeding if ~~he~~ the judge is a witness for or against one of the parties in the case.

16 (f) Upon the filing of a motion to disqualify, the judge shall follow the procedure
17 provided for in G.S. 7A-295."

18 **SECTION 3.** This act becomes effective January 1, 2010.