

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS35209-LL-77 (2/11)

Short Title: Disqualification of Judges/Procedure.

(Public)

Sponsors: Senator Rucho.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A PROCEDURE FOR DETERMINING WHEN A JUDGE SHOULD
3 BE DISQUALIFIED FROM PRESIDING OVER A CASE.

4 The General Assembly of North Carolina enacts:

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

7 "Article 26A.

8 "Disqualification of Judges.

9 "§ 7A-295. Disqualification of judges.

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

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

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

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

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

35 "§ 15A-1223. Disqualification of judge.



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

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

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

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

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

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

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

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

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

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

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