

JAN 20 2010

S.B. NO. 2196

A BILL FOR AN ACT

RELATING TO JUDGES.

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

1 SECTION 1. Section 601-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§601-7 Disqualification of judge; [relationship,
4 pecuniary interest, previous judgment, bias or prejudice.]
5 grounds; peremptory challenge; procedure. (a) No person shall
6 sit as a judge in any case in which:

7 (1) The judge's relative by affinity or consanguinity
8 within the third degree is counsel, or interested
9 either as a plaintiff or defendant, or in the issue of
10 which the judge has, either directly or through such
11 relative, a more than de minimis pecuniary interest;
12 or

13 (2) The judge has been of counsel or on an appeal from any
14 decision or judgment rendered by the judge;

15 provided that no interests held by mutual or common funds, the
16 investment or divestment of which are not subject to the
17 direction of the judge, shall be considered pecuniary interests



1 for purposes of this section; and after full disclosure on the
2 record, parties may waive disqualification due to any pecuniary
3 interest.

4 (b) [~~Whenever a~~] A party to any suit, action, or
5 proceeding, civil or criminal, [~~makes and files an affidavit~~
6 that] may file a motion to disqualify the judge before whom the
7 [~~action or proceeding~~] case is to be tried or heard on the
8 ground that the judge has a personal bias or prejudice either
9 against the party or in favor of any opposite party [~~to the~~
10 suit, the judge shall be disqualified from proceeding therein.]
11 or on other grounds for disqualification under the Hawaii
12 Revised Code of Judicial Conduct. Every such motion shall be
13 supported by an affidavit [~~shall state~~] stating the facts and
14 the reasons for the belief that bias or prejudice exists [~~and~~
15 or that the judge should be disqualified under the Hawaii
16 Revised Code of Judicial Conduct. The motion shall be promptly
17 heard and determined by a judge other than the judge the motion
18 seeks to disqualify, and no other proceedings shall be conducted
19 in the case until an order disposing of the motion has been
20 entered. If the motion is granted, the disqualification shall
21 become effective upon entry of the order, and the disqualified
22 judge shall take no further action in the case thereafter.



1 (c) A party to any suit, action, or proceeding, civil or
2 criminal, may file a notice of peremptory challenge and
3 disqualify the judge before whom the case is to be tried or
4 heard. The notice need not be supported by an affidavit stating
5 facts necessary to establish grounds for disqualification
6 pursuant to subsection (b), and no inference shall be drawn from
7 filing of the notice that such grounds exist. Notice of
8 peremptory challenge of the judge shall be filed before the
9 [trial or hearing of the action or proceeding,] judge begins
10 hearing a dispositive motion or taking evidence at trial in the
11 case, or good cause shall be shown for the failure to file it
12 [within such] by that time. The notice shall become effective
13 upon filing or, if not filed before the judge begins hearing a
14 dispositive motion or taking evidence at trial, at such other
15 time fixed by the court upon a finding of good cause for failure
16 to do so, and the disqualified judge shall take no further
17 action in the case thereafter. No party shall be entitled in
18 any case to file more than one [affidavit; and no affidavit]
19 notice of peremptory challenge, and no notice shall be filed
20 unless accompanied by a certificate of counsel of record that
21 the [affidavit is made] notice is filed in good faith[-] and not
22 for purposes of delay.



S.B. NO. 2196

1 (d) Any judge may disqualify oneself by filing a
2 certificate with the clerk of the court of which the judge is a
3 judge [~~a certificate~~], which states that the judge [~~deems~~
4 ~~oneself~~] is unable for any reason to preside with absolute
5 impartiality in the pending suit or action."

6 SECTION 2. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act shall take effect upon its approval.

9

INTRODUCED BY:

[Handwritten Signature]
by request



Report Title:

Judges; Disqualification

Description:

Clarifies that a judge may be disqualified for cause by motion that must be decided by a different judge. Establishes procedure to permit one peremptory challenge of a judge prior to hearing of a dispositive motion or commencement of trial.

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