

JAN 21 2011

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
18 for purposes of this section; and after full disclosure on the



1 record, parties may waive disqualification due to any pecuniary
2 interest.

3 (b) [~~Whenever a~~] A party to any suit, action, or
4 proceeding, civil or criminal, [~~makes and files an affidavit~~
5 that] may file a motion to disqualify the judge before whom the
6 [action or proceeding] case is to be tried or heard on the
7 ground that the judge has a personal bias or prejudice either
8 against the party or in favor of any opposite party [~~to the~~
9 suit, the judge shall be disqualified from proceeding therein.]
10 or on other grounds for disqualification under the Hawaii
11 Revised Code of Judicial Conduct. Every [~~such~~] motion shall be
12 supported by an affidavit [~~shall state~~] stating the facts and
13 the reasons for the belief that bias or prejudice exists [~~and~~
14 or that the judge should be disqualified under the Hawaii
15 Revised Code of Judicial Conduct. The motion shall be promptly
16 heard and determined by a judge other than the judge the motion
17 seeks to disqualify, and no other proceedings shall be conducted
18 in the case that is the object of the motion until an order
19 disposing of the motion has been entered. If the motion is
20 granted, the disqualification shall become effective upon entry
21 of the order, and the disqualified judge shall take no further
22 action in the case that is the object of the motion 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 a judge before whom a case is to be tried or heard.
4 The notice need not be supported by facts necessary to establish
5 grounds for disqualification pursuant to subsection (b), and no
6 inference shall be drawn from filing the notice that such
7 grounds exist. Notice of peremptory challenge of a judge shall
8 be filed before the [~~trial or hearing of the action or~~
9 ~~proceeding,~~] judge begins hearing a dispositive motion or taking
10 evidence at trial in a case, or good cause shall be shown for
11 the failure to file it [~~within such~~] by that time. The notice
12 shall become effective upon filing or, if not filed before a
13 judge begins hearing a dispositive motion or taking evidence at
14 trial, at another time fixed by the court upon a finding of good
15 cause for failure to do so. The disqualified judge shall take
16 no further action in the case thereafter. No party shall be
17 entitled in any case to file more than one [~~affidavit; and no~~
18 ~~affidavit~~] notice of peremptory challenge, and no notice shall
19 be filed unless accompanied by a certificate of counsel of
20 record that the [~~affidavit is made~~] notice is filed in good
21 faith[-] and not for purposes of delay.



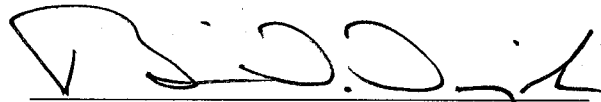

1 (d) Any judge may [~~disqualify oneself~~] be recused by
2 filing a certificate with the clerk of the court of which the
3 judge is a judge [~~a certificate~~], that states that the judge
4 [~~deems oneself~~] is unable for any reason to preside with
5 absolute impartiality in the pending suit or action."

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:


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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

