

JAN 20 2023

A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

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

1 SECTION 1. The legislature finds that the fair,
2 independent, and impartial administration of justice is a
3 long-standing value of American jurisprudence. In Hawaii,
4 existing law prohibits judges to hear any case in which they
5 have a disqualifying relationship, pecuniary interest, previous
6 judgment, or other perceived bias or prejudice. The legislature
7 notes that existing law allows a disqualification of a judge to
8 occur in two ways -- mandatory disqualification upon filing of
9 an affidavit by a party to the suit, action, or proceeding,
10 stating that the judge has a disqualifying personal bias or
11 prejudice; and a voluntary recusal by the judge through the
12 judge's submittal of a certificate deeming oneself unable to
13 preside with absolute impartiality in the pending suit or
14 action.

15 The legislature further finds that at the appellate level,
16 authorizing parties to a suit, action, or proceeding, who
17 believe that a judge or justice presiding over their case on



1 appeal has a disqualifying conflict of interest, to file a
2 motion for a hearing on the judge's or justice's possible
3 conflict of interest, would facilitate a valuable colloquy
4 regarding impartiality, allow the judge or justice the
5 opportunity to rebut any allegation of a disqualifying conflict
6 of interest, and promote transparency within the State's
7 judiciary.

8 Accordingly, the purpose of this Act is to:

- 9 (1) Clarify that the disqualification requirements for
10 judges also apply to justices;
- 11 (2) Establish a process by which a party before an
12 appellate court in the State, who believes that the
13 judge or justice presiding over their case may have a
14 disqualifying conflict of interest, may move for a
15 hearing on possible conflict of interest; and
- 16 (3) Prohibit the appellate court judge or justice who is
17 subject to the motion to hear or rule on the motion
18 but allow them to file a response or voluntarily
19 recuse themselves from presiding over the pending
20 action or proceeding.



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

3 "§601-7 Disqualification [of judge,] and recusal; judges
4 and justices; disqualifying relationship, pecuniary interest,
5 previous judgment, and bias or prejudice. (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 the relative, a more than de minimis pecuniary
12 interest; 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~~] provided further that after
19 full disclosure on the record, parties may waive
20 disqualification due to any pecuniary interest. As used in the
21 subsection, "judge" includes justice.



1 (b) Whenever a party to any suit, action, or proceeding,
2 civil or criminal, [~~makes and~~] files an affidavit that the judge
3 before whom the action or proceeding is to be tried or heard has
4 a personal bias or prejudice either against the party or in
5 favor of any opposite party to the suit, the judge shall be
6 disqualified from proceeding therein. Every [~~such~~] affidavit
7 shall state the facts and the reasons for the affiant party's
8 belief that bias or prejudice exists and shall be filed before
9 the trial or any hearing [~~of~~] on the action or proceeding, or
10 good cause shall be shown for the failure to file [~~it~~] the
11 affidavit within [~~such~~] that time. No party shall be entitled
12 in any case to file more than one affidavit[~~+~~], and no affidavit
13 shall be filed unless accompanied by a certificate of the
14 affiant party's counsel of record declaring that the affidavit
15 is made in good faith. Any judge may [~~disqualify oneself~~]
16 recuse themselves by filing with the clerk of the court [~~of~~] for
17 which the judge [~~is a judge~~] presides, a certificate declaring
18 that the judge [~~deems oneself~~] is unable for any reason to
19 preside with absolute impartiality in the pending suit or
20 action.



1 (c) A party to any suit, action, or proceeding, civil or
2 criminal, in any appellate court in the State may file a motion
3 for a hearing on possible conflict of interest when the party
4 believes that any judge before whom the pending suit, action, or
5 proceeding is to be heard may have a disqualifying conflict of
6 interest resulting in a personal bias or prejudice either
7 against the party or in favor of any opposite party to the case.
8 The motion shall state the facts and reasons for the moving
9 party's belief that bias or prejudice exists and shall be filed
10 before the hearing on the action or proceeding, or good cause
11 shall be shown for the failure to file the motion within that
12 time. No party shall be entitled in any case to file more than
13 one motion for a hearing on possible conflict of interest
14 against a particular judge, and no motion shall be filed unless
15 accompanied by a certificate of the moving party's counsel of
16 record declaring that the motion is made in good faith. The
17 remaining judges on the panel or judge presiding in the court of
18 appeal in which the pending suit, action, or proceeding is to be
19 heard shall hear and rule on the motion filed pursuant to this
20 subsection. The judge who is the subject of the motion shall be



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1 disqualified from hearing or ruling on the motion, but shall
2 have the opportunity to:

3 (1) File a response to the motion; or

4 (2) Recuse themselves by filing with the clerk of the court
5 for which the judge presides, a certificate declaring
6 that the judge is unable for any reason to preside
7 with absolute impartiality in the pending suit,
8 action, or proceeding.

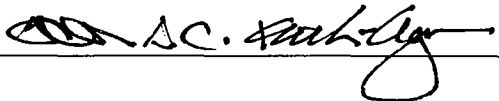
9 As used in this subsection, "judge" includes justice."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

13

INTRODUCED BY:





S.B. NO. 1073

Report Title:

Appellate Courts; Conflicts of Interest; Judges and Justices;
Disqualification and Recusal

Description:

Clarifies that the disqualification requirements for judges also apply to justices. Establishes a process by which a party before an appellate court in the State, who believes that the judge or justice presiding over their case may have a disqualifying conflict of interest, may move for a hearing on possible conflict of interest. Prohibits the appellate court judge or justice who is subject to the motion to hear or rule on the motion but allows them to file a response or voluntarily recuse themselves from presiding over the pending action or proceeding.

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

