
Judiciary Committee

HB 1378

Title: An act relating to disqualification of judges.

Brief Description: Concerning disqualification of judges.

Sponsors: Representatives Graves, Jinkins and Rodne.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Changes the terminology relating to disqualification of judges.• Changes some of the rules governing the process of disqualification.
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Hearing Date: 1/24/17

Staff: Audrey Frey (786-7289).

Background:

If a person who is a party or attorney in an action or proceeding in superior court believes that he or she cannot have a fair and impartial trial before the superior court judge assigned to the case, the person can file a motion and affidavit of prejudice to establish that the judge should be disqualified.

A judge who has been disqualified is prohibited from hearing the case, and the case will be transferred to another judge from a different department in the same court, a visiting judge, or another court.

The rules governing the process of disqualification are as follows:

- In order to establish disqualification of a judge, a person must file a motion and affidavit of prejudice with the judge before the judge makes any ruling on a motion of either party and before the judge has made any order or ruling involving discretion.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- The following are not considered discretionary rulings: the arrangement of the calendar; the setting of an action, motion, or proceeding down for hearing or trial; the arraignment of the accused in a criminal action; and the fixing of bail.
- In counties where there is only one resident judge, the motion and affidavit of prejudice must be filed no later than the day on which the case is called to be set for trial.
- If the parties stipulate to agreement in writing, the judge can hear argument and rule upon any preliminary motions, demurrers, or other matters, even if a motion and affidavit of prejudice has been filed.
- No party or attorney is permitted to make more than one application to establish disqualification of a judge in any action or proceeding.

Summary of Bill:

All references to a motion and affidavit of prejudice are replaced with references to a notice of disqualification.

The rules governing the process of disqualification remain the same, except for the changes italicized below:

- The following are not considered discretionary rulings: *arranging the calendar; setting a date for a hearing or trial; ruling on an agreed continuance; issuing an arrest warrant; presiding over certain criminal preliminary proceedings;* arraignment of the accused; fixing bail; and *presiding over juvenile detention and release hearings.*
- A judge who has been disqualified under this section may decide such issues as the parties agree in writing *or on the record in open court.*

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.