
HOUSE BILL 1305

State of Washington

66th Legislature

2019 Regular Session

By Representatives Walen and Irwin

Read first time 01/18/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to notices of disqualification in courts of
2 limited jurisdiction; amending RCW 3.34.110, 3.50.045, 35.20.175,
3 3.34.130, 3.50.090, and 3.66.090; and repealing RCW 3.20.100.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 3.34.110 and 2008 c 227 s 7 are each amended to read
6 as follows:

7 (1) A district court judicial officer shall not preside in any of
8 the following cases:

9 (a) In an action to which the judicial officer is a party, or in
10 which the judicial officer is directly interested, or in which the
11 judicial officer has been an attorney for a party.

12 (b) When the judicial officer (~~or one of the parties~~) believes
13 that the parties cannot have an impartial trial or hearing before the
14 judicial officer. (~~The judicial officer shall disqualify himself or
15 herself under the provisions of this section if, before any
16 discretionary ruling has been made, a party files an affidavit that
17 the party cannot have a fair and impartial trial or hearing by reason
18 of the interest or prejudice of the judicial officer. The following
19 are not considered discretionary rulings: (i) The arrangement of the
20 calendar; (ii) the setting of an action, motion, or proceeding for
21 hearing or trial; (iii) the arraignment of the accused; or (iv) the~~

1 ~~fixing of bail and initially setting conditions of release. Only one~~
2 ~~change of judicial officer is allowed each party in an action or~~
3 ~~proceeding.))~~

4 (c) When any party to or any attorney appearing in any action or
5 proceeding has disqualified a judicial officer from hearing the
6 matter, subject to these limitations:

7 (i) Notice of disqualification must be filed and called to the
8 attention of the judicial officer before the judicial officer has
9 made any discretionary ruling in the case.

10 (ii) In courts with only one resident judicial officer, the
11 notice of disqualification must be filed not later than the day on
12 which the case is called to be set for trial.

13 (iii) A judicial officer who has been disqualified under this
14 subsection (1)(c) may decide such issues as the parties agree in
15 writing or on the record in open court.

16 (iv) No party or attorney is permitted to disqualify more than
17 one judicial officer in any matter under this subsection (1)(c).

18 (v) Even though they may involve discretion, the following
19 actions by a judicial officer do not cause the loss of the right to
20 file a notice of disqualification against that judicial officer:
21 Arranging the calendar, setting a date for a hearing or trial, ruling
22 on an agreed continuance, issuing an arrest warrant, presiding over
23 criminal preliminary proceedings under CrRLJ 3.2.1, arraigning the
24 accused, and fixing bail.

25 (2) When a judicial officer is disqualified under this section,
26 the case shall be heard before another judicial officer of the same
27 county.

28 (3) For the purposes of this section, "judicial officer" means a
29 judge, judge pro tempore, or court commissioner.

30 **Sec. 2.** RCW 3.50.045 and 2008 c 227 s 9 are each amended to read
31 as follows:

32 (1) A municipal court judicial officer shall not preside in any
33 of the following cases:

34 (a) In an action to which the judicial officer is a party, or in
35 which the judicial officer is directly interested, or in which the
36 judicial officer has been an attorney for a party.

37 (b) When the judicial officer (~~or one of the parties~~) believes
38 that the parties cannot have an impartial trial or hearing before the
39 judicial officer. (~~The judicial officer shall disqualify himself or~~

1 herself under the provisions of this section if, before any
2 discretionary ruling has been made, a party files an affidavit that
3 the party cannot have a fair and impartial trial or hearing by reason
4 of the interest or prejudice of the judicial officer. The following
5 are not considered discretionary rulings: (i) The arrangement of the
6 calendar; (ii) the setting of an action, motion, or proceeding for
7 hearing or trial; (iii) the arraignment of the accused; or (iv) the
8 fixing of bail and initially setting conditions of release. Only one
9 change of judicial officer is allowed each party in an action or
10 proceeding.)

11 (c) When any party to or any attorney appearing in any action or
12 proceeding has disqualified a judicial officer from hearing the
13 matter, subject to these limitations:

14 (i) Notice of disqualification must be filed and called to the
15 attention of the judicial officer before the judicial officer has
16 made any discretionary ruling in the case.

17 (ii) In courts with only one resident judicial officer, the
18 notice of disqualification must be filed not later than the day on
19 which the case is called to be set for trial.

20 (iii) A judicial officer who has been disqualified under this
21 subsection (1)(c) may decide such issues as the parties agree in
22 writing or on the record in open court.

23 (iv) No party or attorney is permitted to disqualify more than
24 one judicial officer in any matter under this subsection (1)(c).

25 (v) Even though they may involve discretion, the following
26 actions by a judicial officer do not cause the loss of the right to
27 file a notice of disqualification against that judicial officer:
28 Arranging the calendar, setting a date for a hearing or trial, ruling
29 on an agreed continuance, issuing an arrest warrant, presiding over
30 criminal preliminary proceedings under CrRLJ 3.2.1, arraigning the
31 accused, and fixing bail.

32 (2) When a judicial officer is disqualified under this section,
33 the case shall be heard before another judicial officer of the
34 municipality.

35 (3) For the purposes of this section, "judicial officer" means a
36 judge, judge pro tempore, or court commissioner.

37 **Sec. 3.** RCW 35.20.175 and 2008 c 227 s 10 are each amended to
38 read as follows:

1 (1) A municipal court judicial officer shall not preside in any
2 of the following cases:

3 (a) In an action to which the judicial officer is a party, or in
4 which the judicial officer is directly interested, or in which the
5 judicial officer has been an attorney for a party.

6 (b) When the judicial officer (~~or one of the parties~~) believes
7 that the parties cannot have an impartial trial or hearing before the
8 judicial officer. (~~The judicial officer shall disqualify himself or
9 herself under the provisions of this section if, before any
10 discretionary ruling has been made, a party files an affidavit that
11 the party cannot have a fair and impartial trial or hearing by reason
12 of the interest or prejudice of the judicial officer. The following
13 are not considered discretionary rulings: (i) The arrangement of the
14 calendar; (ii) the setting of an action, motion, or proceeding for
15 hearing or trial; (iii) the arraignment of the accused; or (iv) the
16 fixing of bail and initially setting conditions of release. Only one
17 change of judicial officer is allowed each party in an action or
18 proceeding.~~)

19 (c) When any party to or any attorney appearing in any action or
20 proceeding has disqualified a judicial officer from hearing the
21 matter, subject to these limitations:

22 (i) Notice of disqualification must be filed and called to the
23 attention of the judicial officer before the judicial officer has
24 made any discretionary ruling in the case.

25 (ii) In courts with only one resident judicial officer, the
26 notice of disqualification must be filed not later than the day on
27 which the case is called to be set for trial.

28 (iii) A judicial officer who has been disqualified under this
29 subsection (1)(c) may decide such issues as the parties agree in
30 writing or on the record in open court.

31 (iv) No party or attorney is permitted to disqualify more than
32 one judicial officer in any matter under this subsection (1)(c).

33 (v) Even though they may involve discretion, the following
34 actions by a judicial officer do not cause the loss of the right to
35 file a notice of disqualification against that judicial officer:
36 Arranging the calendar, setting a date for a hearing or trial, ruling
37 on an agreed continuance, issuing an arrest warrant, presiding over
38 criminal preliminary proceedings under CrRLJ 3.2.1, arraigning the
39 accused, and fixing bail.

1 (2) When a judicial officer is disqualified under this section,
2 the case shall be heard before another judicial officer of the
3 municipality.

4 (3) For the purposes of this section, "judicial officer" means a
5 judge, judge pro tempore, or court commissioner.

6 **Sec. 4.** RCW 3.34.130 and 1996 c 16 s 1 are each amended to read
7 as follows:

8 (1) Each district court shall designate one or more persons as
9 judge pro tempore who shall serve during the temporary absence,
10 disqualification, or incapacity of a district judge or to serve as an
11 additional judge for excess caseload or special set cases. The
12 qualifications of a judge pro tempore shall be the same as for a
13 district judge, except that with respect to RCW 3.34.060(1), the
14 person appointed need only be a registered voter of the state. A
15 district that has a population of not more than ten thousand and that
16 has no person available who meets the qualifications under RCW
17 3.34.060(2)(a) (~~(or (b))~~), may appoint as a pro tempore judge a
18 person who has taken and passed the qualifying examination for the
19 office of district judge as is provided by rule of the supreme court.
20 A judge pro tempore may sit in any district of the county for which
21 he or she is appointed. A judge pro tempore shall be paid the salary
22 authorized by the county legislative authority.

23 (2) For each day that a judge pro tempore serves in excess of
24 thirty days during any calendar year, the annual salary of the
25 district judge in whose place the judge pro tempore serves shall be
26 reduced by an amount equal to one-two hundred fiftieth of such
27 salary: PROVIDED, That each full time district judge shall have up to
28 fifteen days annual leave without reduction for service on judicial
29 commissions established by the legislature or the chief justice of
30 the supreme court. No reduction in salary shall occur when a judge
31 pro tempore serves:

32 (a) While a district judge is using sick leave granted in
33 accordance with RCW 3.34.100;

34 (b) While a district court judge is disqualified from serving
35 following the filing of (~~an affidavit of prejudice~~) a notice of
36 disqualification;

37 (c) As an additional judge for excess case load or special set
38 cases; or

1 (d) While a district judge is otherwise involved in
2 administrative, educational, or judicial functions related to the
3 performance of the judge's duties: PROVIDED, That the appointment of
4 judge pro tempore authorized under subsection (2)(c) and (d) of this
5 section is subject to an appropriation for this purpose by the county
6 legislative authority.

7 (3) The legislature may appropriate money for the purpose of
8 reimbursing counties for the salaries of judges pro tempore for
9 certain days in excess of thirty worked per year that the judge pro
10 tempore was required to work as the result of service by a judge on a
11 commission as authorized under subsection (2) of this section. No
12 later than September 1 of each year, each county treasurer shall
13 certify to the administrator for the courts for the year ending the
14 preceding June 30, the number of days in excess of thirty that any
15 judge pro tempore was required to work as the result of service by a
16 judge on a commission as authorized under subsection (2) of this
17 section. Upon receipt of the certification, the administrator for the
18 courts shall reimburse the county from money appropriated for that
19 purpose.

20 **Sec. 5.** RCW 3.50.090 and 2000 c 55 s 1 are each amended to read
21 as follows:

22 The presiding municipal court judge may designate one or more
23 persons as judges pro tem to serve in the absence or disability of
24 the elected or duly appointed judges of the court, subsequent to the
25 filing of (~~an affidavit of prejudice~~) a notice of disqualification,
26 or in addition to the elected or duly appointed judges when the
27 administration of justice and the accomplishment of the work of the
28 court make it necessary. The qualifications of a judge pro tempore
29 shall be the same as for judges as provided under RCW 3.50.040 except
30 that a judge pro tempore need not be a resident of the city or county
31 in which the municipal court is located. Judges pro tempore shall
32 have all of the powers of the duly appointed or elected judges when
33 serving as judges pro tempore of the court. Before entering on his or
34 her duties, each judge pro tempore shall take, subscribe, and file an
35 oath as is taken by a duly appointed or elected judge. Such pro
36 tempore judges shall receive such compensation as shall be fixed by
37 ordinance by the municipality in which the court is located and such
38 compensation shall be paid by the municipality.

1 **Sec. 6.** RCW 3.66.090 and 1984 c 258 s 49 are each amended to
2 read as follows:

3 A change of venue may be allowed upon motion:

4 (1) Where there is reason to believe that an impartial trial
5 cannot be had in the district or municipal court in which the action
6 was commenced; or

7 (2) Where the convenience of witnesses or the ends of justice
8 would be forwarded by the change.

9 When such change is ordered, it shall be to the district court of
10 another district in the same county, if any, otherwise to the
11 district court of an adjacent district in another county: PROVIDED,
12 That where (~~an affidavit of prejudice~~) a notice of disqualification
13 is filed against a judge of a municipal court the cause shall be
14 transferred to another department of the municipal court, if one
15 exists, otherwise to a judge pro tempore appointed in the manner
16 prescribed by law. The court to which a case is removed on change of
17 venue under this section shall have the same jurisdiction, either
18 civil or criminal to hear and determine the case as the court from
19 which the case was removed.

20 NEW SECTION. **Sec. 7.** RCW 3.20.100 (Change of venue—Affidavit of
21 prejudice) and 2011 c 336 s 72, 1943 c 126 s 1, 1881 p 8 ss 2, 3,
22 Code 1881 s 1938, & 1867 p 88 s 2 are each repealed.

--- END ---