
DIGEST

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HB 328 Original

2021 Regular Session

Cormier

Abstract: Provides grounds for the recusal of judges.

Present law provides that a judge of any court shall be recused when he does any of the following:

- (1) Is a witness in the cause.
- (2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause.
- (3) Is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause.
- (4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

Proposed law repeals present law and provides that a judge shall recuse himself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of facts that are in dispute in the proceeding.
- (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them or the spouse or domestic partner of such a person is any of the following:
 - (a) A party to the proceeding or an officer, director, general partner, managing member, or trustee of a party.
 - (b) Acting as a lawyer in the proceeding.
 - (c) A person who has more than a de minimis interest that could be substantially affected by the proceeding.

- (d) Likely to be a material witness in the proceeding.
- (3) The judge knows that he, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.
- (4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has made aggregate contributions to the judge's campaign in an amount that exceeds what is reasonable and appropriate for an individual or an entity.
- (5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (6) The judge has done any of the following:
 - (a) Served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association.
 - (b) Served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy.
 - (c) Was a material witness concerning the matter.
 - (d) Previously presided as a judge over the matter in another court.
 - (e) Has been involved in personal litigation with or against a party or a party's lawyer.
 - (f) Made a public statement criticizing a party or a party's lawyer.
- (7) The judge is facing criminal prosecution, an administrative hearing, or there exists any contemporaneous leverage over the judge or his property by a party or a party's attorney, or the attorney's family member to the fourth degree.
- (8) The judge is involved in an intimate relationship with a party or a party's attorney.

Present law provides that a judge may be recused when he does any of the following:

- (1) Has been associated with an attorney during the latter's employment in the cause.
- (2) Has performed a judicial act in the cause in another court.

- (3) Is related to an attorney employed in the cause or the spouse of the attorney, within the second degree.
- (4) The judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

Proposed law repeals present law.

Present law provides that a judge may be recused when at the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the lawyer actually handling the cause and in this case the employment shall be disclosed to each party in the cause.

Proposed law retains present law but makes the grounds for recusal mandatory.

Present law further provides that a judge may be recused when he is related to a party or the spouse of a party, within the fourth degree. Proposed law provides that the judge may be recused when he is related to a party or the spouse of a party in the fourth degree.

Proposed law requires a judge to keep informed of his personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of his spouse or domestic partner and minor children residing in his household.

Proposed law provides that a judge subject to recusal, other than for bias or prejudice, may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider outside the presence of the judge and court personnel whether to waive recusal.

Proposed law further provides that if following the disclosure the parties and lawyers agree that the judge should not be recused, the judge may participate in the proceeding and the agreement shall be incorporated into the record of the proceeding.

Present law provides that in any cause in which the state, or a political subdivision thereof, or a religious body or corporation is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or is a member of the religious body or corporation, is not a ground for recusal.

Proposed law retains present law.

Proposed law provides definitions for "aggregate", "contribution", "de minimis", "domestic partner", "economic interest", "fiduciary", "impartiality", "judicial candidate", "knowledge", and "member of the judge's family".

(Amends C.C.P. Art. 151)