

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 797
Judiciary I Committee Substitute Adopted 5/7/09

Short Title: Reasons for Judge's Disqualification.

(Public)

Sponsors:

Referred to:

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A JUSTICE'S OR A JUDGE'S DISQUALIFICATION FROM
3 A CASE SHALL BE IN WRITING AND SHALL SPECIFY THE REASON FOR THE
4 DISQUALIFICATION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 7A of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 6A.

9 "Disqualification of Justices or Judges of the Appellate Division of the General Court of
10 Justice.

11 "**§ 7A-39.20. Disqualification of justice or judge shall be in writing.**

12 A justice or judge may disqualify himself or herself from participating in the consideration
13 or decision of any question presented to the Supreme Court or the Court of Appeals for any of
14 the reasons provided for in Canon 3 of the Code of Judicial Conduct or for any other reason
15 that renders the justice or judge unable to perform the duties required of the justice or judge in
16 the proceeding in an impartial manner. A justice or judge who disqualifies himself or herself,
17 whether on the justice's or judge's own motion or in response to a motion of one of the parties,
18 shall do so in writing and shall state the specific reason or reasons for the disqualification."

19 SECTION 2. Chapter 7A of the General Statutes is amended by adding a new
20 Article to read:

21 "Article 26A.

22 "Disqualification of Judges of the Trial Divisions of the General Court of Justice.

23 "**§ 7A-295. Disqualification of judge shall be in writing.**

24 A judge may disqualify himself or herself from presiding over a civil or criminal
25 proceeding for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in
26 G.S. 15A-1223 or for any other reason that renders the judge unable to perform the duties
27 required of the judge in the proceeding in an impartial manner. A judge who disqualifies
28 himself or herself, whether on the judge's own motion or in response to a motion of one of the
29 parties, shall do so in writing and shall state the specific reason or reasons for the
30 disqualification."

31 SECTION 3. G.S. 15A-1223 reads as rewritten:

32 "**§ 15A-1223. Disqualification of judge.**

33 (a) A judge on his or her own motion may disqualify himself or herself from presiding
34 over a criminal trial or other criminal proceeding.

35 (b) A judge, on motion of the State or the defendant, must disqualify himself or herself
36 from presiding over a criminal trial or other criminal proceeding if ~~he~~ the judge is:

37 (1) Prejudiced against the moving party or in favor of the adverse party; or



- 1 (2) Repealed by Session Laws 1983 (Regular Session 1984), c. 1037, s. 6.
2 (3) Closely related to the defendant by blood or marriage; or
3 (4) For any other reason unable to perform the duties required of ~~him~~ the judge
4 in an impartial manner.
- 5 (c) A motion to disqualify must be in writing and must be accompanied by one or more
6 affidavits setting forth facts relied upon to show the grounds for disqualification.
- 7 (d) A motion to disqualify a judge must be filed no less than five days before the time
8 the case is called for trial unless good cause is shown for failure to file within that time. Good
9 cause includes the discovery of facts constituting grounds for disqualification less than five
10 days before the case is called for trial.
- 11 (e) A judge must disqualify himself or herself from presiding over a criminal trial or
12 proceeding if ~~he~~ the judge is a witness for or against one of the parties in the case.
- 13 (f) A judge may disqualify himself or herself from presiding over a criminal proceeding
14 for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in this
15 section or for any other reason that renders the judge unable to perform the duties required of
16 the judge in the proceeding in an impartial manner. A judge who disqualifies himself or herself,
17 whether on the judge's own motion or in response to a motion of one of the parties, shall do so
18 in writing and shall state the specific reason or reasons for the disqualification."

19 **SECTION 4.** This act becomes effective July 1, 2009.