

**Oregon State Bar testimony on  
House Bill 2998  
House Judiciary Committee**

March 11, 2021

Chair Bynum, and members of the Committee,

Thank you for the opportunity to testify on House Bill 2998. The bill, as introduced, removes the option to disqualify a judge in a district with three or fewer circuit court judges.

**Background.** During the 2013 session Senate Bill 812 was introduced to address the process of disqualifying judges in judicial districts with three or fewer circuit court judges. Under SB 812 a party would not be able to make more than one motion to disqualify a judge due to a party's belief that they cannot have a fair or impartial trial or hearing before the judge in question. Currently, parties are permitted to make two such motions.

Eight years ago, SB 812 passed the Senate but did not receive a vote in the House Judiciary Committee before the end of the 2013 Legislative Session. After the legislative session ended, the chair of the Senate Judiciary Committee requested the Oregon State Bar convene a task force to look into this issue in more detail and report back with recommendations.

**Senate Bill 812 Task Force.** The Senate Bill 812 Task Force reviewed the affidavit process in the 15 Western States as well as the use of affidavits in each of Oregon's 36 counties. The Task Force considered questions regarding statewide v. local rules, "judge shopping," budgetary limitations on finding an alternate judge when needed, and the number of motions for a change in judge.

The Senate Bill 812 Task Force issued its final report in June of 2014 (which has been posted to OLIS as well). While the Task Force generally supported a statewide rule on the use of alternate judges, the group could not reach agreement what that rule would be. If there is continued interest in this issue, the Task Force did recommend that Oregon may want to further review the Arizona model (Ariz. R. Civ. P. 42(f)) for possible consideration and adoption.

**Ethics Opinions.** In 2018, the Oregon State Bar released [Formal Opinion 2018-193](#), which discusses several aspects of when it is ethical for an attorney to move for disqualification of a judge under ORS 14.260. One important reminder in the Opinion is that while a lawyer may make a motion for a change of judge if they believe that their client cannot get fair and

impartial proceeding before a particular judge, they may not do so simply because they believe that their client will obtain a more favorable outcome before a different judge. That form of “judge shopping” would be a violation of the Rules of Professional Conduct.

The Oregon State Bar is happy to continue to work on this issue if it is taken up by another workgroup in the future.

Respectfully submitted on behalf of the Oregon State Bar.