DA Kelsie McDaniel **DA Rebecca Frolander** **DA Greg Baxter**

February 26, 2022

RE: SB 807

As District Attorneys, we never thought that we would be faced with the situation where we felt that it was absolutely necessary to file a disqualification against a judge. This "nuclear option" is not taken lightly, and while we never expected to do so, we also realize that sometimes we are left with no other choice to protect the interest of the State, public safety, victims and defendants in our jurisdictions.

We can speak from personal experience, as well as from the shared knowledge of fellow current and retired District Attorneys about the great lengths, and extreme situations that lead to the ultimate need to file a disqualification of a judge.

We want you to know that this decision is a last resort, after every effort to try to make the situation workable. And there are a variety of reasons why it may come down to the only available recourse. A judge may be suffering from cognitive issues and cannot recall basic facts or even who the parties are. It may be a judge blatantly siding with defense attorneys, and even giving legal advice or recommendations from the bench. It may be a judge with a strong bias, who continues to make decisions based on that bias, even after having that bias brought to his or her attention. It may be a judge who appears on the bench impaired. It may be a judge that threatens sanctions, contempt or even jail to the parties when he or she is angry. It may be a judge that conducts courtroom business without both parties present. Or maybe a judge who simply cannot or will not follow the law. When faced with that circumstance, there is very little recourse to protect the public, victims and parties from irreversible injustice.

Before a disqualification motion is filed, District Attorneys often consult with all of the interested stake holders about the issues or incidents at play: police officers, parole officers, juvenile counselors, county employees, victims, fellow attorneys, and our employees. Usually these parties have already come to the DA to ask what can be done. To be clear, this is not a decision made in a silo. In fact, often times colleagues of the judge in question or even a presiding judge may *ask* a DA to file a disqualification motion.

These discussions also include conversations about the impact and "backlog of the docket" or the strain that disqualification places on a small jurisdiction. As DAs from largely rural judicial districts this is especially true for our counties. These discussions also often include OJD staff members or other judges who are also aware of the circumstances.

SB 807 as drafted does not reflect these thoughtful steps that are currently taking place, in the rare situation when a disqualification is sought. We urge the Committee to not pass this unfairly applied and punitive proposal.

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