

FORMAL OPINION NO 2018-193

Candor, Independent Professional Judgment, Communication, Seeking Disqualification of Judges

Facts:

Lawyer practices primarily in *ABC* County and represents Defendant in a personal-injury litigation. Judge *X*, a circuit court judge in *ABC* County, is assigned to preside over the case. Lawyer has no reason to believe that Judge *X* has any specific bias against Lawyer or Defendant personally. However, Lawyer believes that Judge *X* has a reputation for doing just about everything that can be done to support personal-injury plaintiffs—e.g., by consistently construing facts and law against personal-injury defendants, by frequently granting motions to add punitive damages, by refusing to grant summary judgment to personal-injury defendants, etc.

Lawyer is considering whether to file an affidavit and motion for change of judge pursuant to ORS 14.260.¹ Lawyer believes that there are potential pros and cons to doing so. Lawyer is also concerned, however, that if Lawyer moves to disqualify Judge *X* in Defendant's case he will need to start regularly filing similar motions against Judge *X* in all of Lawyer's personal-injury cases. As a result, Lawyer's reputation could be tarnished. For example, one or more other circuit court judges in *ABC* County may take offense and treat Defendant or Lawyer's other clients more harshly. In addition, Lawyer's ability to represent other clients before Judge *X* in non-personal-injury cases, or when the time for filing an affidavit for change of judge has passed, could be adversely affected.

Questions:

1. May Lawyer file an affidavit for change of judge against Judge *X* in Defendant's case?

¹ Historically, such affidavits were referred to as "affidavits of prejudice," although that terminology no longer appears in the current version of ORS 14.260.

2. May Lawyer consider the impact that filing an affidavit for change of judge could have on Lawyer's other clients or the Lawyer's reputation generally?

3. Must Lawyer advise Defendant about Judge X's reputation and the option to potentially disqualify Judge X?

Conclusions:

1. See discussion.
2. No, qualified.
3. See discussion.

Discussion:

One method for seeking a judge's disqualification in Oregon is set forth in ORS 14.250 to 14.260.² Under ORS 14.260(1), a lawyer or party may (but is not required to) seek disqualification of a judge by filing a motion and supporting affidavit stating that "the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay." ORS 14.260(1). The affidavit need not state specific grounds for the attorney's or party's belief. ORS 14.260(1). In addition, the motion *must* be granted unless the challenged judge contests disqualification. ORS 14.260(1). If contested, the challenged judge bears the burden of proof to establish that the attorney or party filed the affidavit in bad faith. ORS 14.260(1).³ The motion and affidavit must be filed within certain statutory time limits, and a party or attorney may not file more than two affidavits in any one case. ORS 14.260(4)–(6).⁴

² Additional grounds for disqualification are set forth in ORS 14.210.

³ See also *State ex rel. Kafoury v. Jones*, 315 Or 201, 207, 843 P2d 932 (1992).

⁴ For a more thorough discussion of motions and affidavits for change of judge under ORS 14.260, see 1 *Criminal Law* § 12.6-2 (OSB Legal Pubs 2013).

1. *May Lawyer File an Affidavit for Change of Judge against Judge X?*

The first question implicates the ethical restrictions that govern a lawyer's decision as to whether to file an affidavit for change of judge when there is concern about a judge's perceived reputation against a certain class of litigants, rather than the specific parties or attorneys in the case.⁵ There are several relevant Oregon Rules of Professional Conduct (RPCs).

Oregon RPC 3.3(a)(1) provides, in pertinent part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer

Oregon RPC 8.2(a) provides:

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge

Oregon RPC 8.4(a) provides, in pertinent part:

(a) It is professional misconduct for a lawyer to:

. . . .

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law; [or]

(4) engage in conduct that is prejudicial to the administration of justice

⁵ We emphasize that this opinion does not address whether a judge's reputation for bias against a certain class of litigants is or should be a proper basis alone for disqualification under ORS 14.260—that issue is for the legislature and courts to decide. This Committee is authorized to construe statutes and regulations pertaining directly to lawyers, but not to construe substantive law generally. *See* OSB Formal Ethics Op No 2006-176 (rev 2015). This opinion addresses only the circumstances under which an attorney's filing of an affidavit for change of judge under ORS 14.260 is *ethically* permissible under the Oregon Rules of Professional Conduct.

Taken together, Oregon RPCs 3.3(a)(1), 8.2(a), and 8.4(a)(3)–(4) prohibit lawyers from making any false statements in an affidavit for change of judge. The critical issue, therefore, is whether Lawyer can truthfully state in an affidavit under ORS 14.260 that: (1) Lawyer believes Defendant or Lawyer cannot receive a fair and impartial trial or hearing before Judge *X*; *and* (2) Lawyer is filing the disqualification motion in “good faith and not for the purpose of delay.” As far as the Oregon RPCs are concerned, these are subjective inquiries. Lawyer must consider each question independently in light of the specific facts, procedural posture, and applicable law of his or her case. Only if Lawyer can truthfully answer yes to both questions may Lawyer ethically file an affidavit and motion to disqualify Judge *X* under ORS 14.260.

As to the first question, Lawyer must consider whether his or her concern about Judge *X* is significant enough that Lawyer honestly believes that Defendant cannot receive a fair and impartial trial or hearing before Judge *X*. However, even if Lawyer concludes (after conducting this analysis) that he or she honestly believes that Defendant or Lawyer cannot receive a fair and impartial trial or hearing before Judge *X*, that does not end the inquiry. Lawyer must then consider the second question—can Lawyer truthfully state that the motion would be brought in “good faith and not for the purpose of delay”?

In considering the second question, Lawyer must draw a careful distinction between seeking to disqualify Judge *X* to ensure a fair and impartial proceeding for Defendant versus doing so to obtain a tactical advantage in the litigation. The former situation would constitute good faith; the latter would not. For example, it would not be “good faith” for Lawyer to file a motion to disqualify Judge *X* if Lawyer’s primary reason was to delay resolution of the case, or to maximize the chances that a more favorable judge will be assigned to Defendant’s case, or as an attempt to get Defendant’s case transferred to a more favorable venue.⁶ Using an affidavit for change of judge as a means of judge or forum shopping, or for other strategic advantage, constitutes bad faith and, thus, Lawyer would violate Oregon RPC 3.3, Oregon RPC 8.2, and Oregon

⁶ These examples are not intended to be exhaustive.

RPC 8.4 by filing an affidavit and motion to disqualify a judge primarily for those reasons.

2. *May Lawyer Consider the Impact Filing an Affidavit for Change of Judge Might Have on Lawyer's Other Clients or Lawyer's Own Reputation?*

Filing an affidavit for change of judge can have significant consequences for a lawyer. Lawyers may be concerned about the effect that filing such an affidavit could have on their own reputation or practice, or on their other clients in the future. This is particularly true for lawyers who practice in smaller counties where the local Bar and pool of available judges are relatively small, and for lawyers who typically represent only one class of litigants (such as in criminal and personal-injury contexts).

Oregon RPC 2.1 provides, in pertinent part, that “in representing a client, a lawyer shall exercise independent professional judgment.” In addition, Oregon RPC 1.7(a) provides, in pertinent part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

....

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by the personal interest of the lawyer . . .

The duties to exercise “[l]oyalty and independent judgment are essential elements in the lawyer's relationship to a client.” ABA Model RPC 1.7, cmt [1]. Generally speaking, Oregon RPC 2.1 and Oregon RPC 1.7 require a lawyer to make decisions with only his or her client's interests in mind, not the lawyer's personal interests or the interests of other clients or third parties.⁷

⁷ For a broader discussion on the duties to exercise loyalty and independent judgment, see the Annotation to ABA Model RPC 2.1.

In the context of a disqualification motion, this means that Lawyer must evaluate whether to file an affidavit for change of judge on a case-by-case basis, without regard to Lawyer's personal interests or the interests of others. Lawyer may consider only the impact that seeking disqualification of Judge *X* could have on Defendant's case. Lawyer may not consider the effect, if any, that seeking Judge *X*'s disqualification could have on Lawyer's own practice, or on Lawyer's other current or future clients or cases.

Moreover, if there is a significant risk that Lawyer's analysis of the disqualification issue in Defendant's case will be materially limited by his or her concerns about Lawyer's personal interests, or the interests of other clients or third parties, then under Oregon RPC 1.7(a)(2) Lawyer must withdraw from the representation unless Lawyer's continued representation complies with the requirements of Oregon RPC 1.7(b).

This is not to say that Lawyer may never consider the potential impact a disqualification motion would have on Lawyer's own credibility, reputation, or relationship with Judge *X* or other judges in *ABC* County. Lawyer may ethically consider such factors to the extent Lawyer believes they could impact Lawyer's representation of *Defendant*. For example, it would be permissible for Lawyer to consider whether filing an affidavit against Judge *X* could negatively affect how other judges in *ABC* County (who might preside over Defendant's case if Judge *X* is disqualified) might treat Lawyer or Defendant in Defendant's specific proceeding.

3. *Whether Lawyer Has a Duty to Advise Client about the Option to file an Affidavit for Change of Judge*

Question No. 3 asks whether Lawyer has an affirmative duty to advise Defendant about Judge *X*'s reputation and the potential option to file a motion to disqualify Judge *X*.

Oregon RPC 1.4 provides:

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In addition, Oregon RPC 1.2(a) provides, in pertinent part:

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

In this hypothetical, the first question is whether there is even a decision for Lawyer to potentially discuss with Defendant. In other words, Lawyer must determine initially whether he or she can even file a motion to disqualify Judge *X*. If Lawyer has concluded that he or she cannot legally *and* ethically file a motion to disqualify Judge *X* (see discussion in Part 1 above), then there is nothing to discuss with Defendant, and Lawyer would have no duty under Oregon RPCs 1.2 or 1.4 to advise Defendant of any potential option to file an affidavit against Judge *X*.⁸

If, however, Lawyer has concluded that he or she could legally and ethically file an affidavit for change of judge against Judge *X*, Lawyer has a duty under Oregon RPC 1.2 and 1.4 to reasonably consult with Defendant about that decision. At a minimum, Lawyer should inform Defendant about the basis of his or her concerns about Judge *X*, the available options and procedure under ORS 14.260, and the potential advantages and disadvantages to filing a motion to disqualify.

In doing so, Lawyer must disclose sufficient information for Defendant to intelligently participate in a discussion about whether to file

⁸ Of course, should Defendant ask Lawyer to explain why a motion to disqualify cannot be filed, Lawyer would need to provide a reasonable response to the client inquiry under Oregon RPC 1.2(a).

an affidavit for change of judge. As the *Restatement (Third) of the Law Governing Lawyers* states:

The lawyer’s duty to consult goes beyond dispatching information to the client. The lawyer must, when appropriate, inquire about the client’s knowledge, goals, and concerns about the matter, and must be open to discussion of the appropriate course of action. . . .

[The level of consultation is measured by a standard of reasonableness and] depends upon such factors as the importance of the information or decision, the extent to which disclosure or consultation has already occurred, the client’s sophistication and interest, and the time and money that reporting or consulting will consume.⁹

The timing of that discussion will depend on the specific circumstances of the representation and how potential disqualification issue arises. The identity of a judge is an important issue in any case, and, if feasible, lawyers should consult with their clients *before* making a decision about whether to file an affidavit for change of judge. In some situations, however, a lawyer may need to decide about filing an affidavit for change of judge without any reasonable opportunity to consult with the client beforehand—such as when the lawyer faces an impending deadline or when applicable rules or substantive law requires the lawyer to either file the affidavit immediately or risk waiver. If reasonably necessary under the circumstances, a lawyer may decide whether to file an affidavit for change of judge without first consulting with his or her client; however, even then, the lawyer must reasonably inform the client about the lawyer’s decision within a reasonable time thereafter.

Finally, there may be circumstances where the lawyer and client, even after consultation, disagree about whether to file a disqualification motion. Such a decision goes to the “means,” not the “objectives,” of the representation. Moreover, filing a motion to disqualify is not one of the enumerated decisions listed in Oregon RPC 1.2(a) that is expressly reserved to the client (e.g., whether to accept a settlement). Accordingly, the lawyer is ethically permitted to make the final decision as to whether

⁹ *Restatement (Third) of the Law Governing Lawyers* § 20 cmt c (2000).

to seek disqualification, even over his or her client’s objection, provided the lawyer has adequately consulted with the client, as discussed above.¹⁰

In the criminal context, we note that the lawyer may need to consider other factors besides ethical considerations in resolving such a disagreement. Criminal defendants possess constitutional rights that are not implicated in civil cases. “[T]he decision-making authority of a criminal defendant is therefore broader than that of a client in a civil matter.”¹¹ Criminal defense lawyers should consider, among other things, whether the decision to file an affidavit for change of judge in his or her client’s specific case implicates the client’s fundamental rights under the Sixth Amendment. That issue is beyond the scope of what this Committee can opine on.

Approved by the Board of Governors, March 2018.

¹⁰ Of course, the client retains the ultimate right to resolve any disagreement by discharging the lawyer. See Oregon RPC 1.16(a)(3); ABA Model RPC 1.2, cmt [2].

¹¹ Annotation to ABA Model RPC 1.4 at 36–37 (citing various authorities).

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* chapter 4 (withdrawal from employment), § 7.4 (client communication), § 7.5-1 (abiding by client’s decision), § 8.4-1 (false statements to tribunal), § 8.11 (conduct prejudicial to administration of justice), § 9.2-1 to § 9.2-1(a) (personal-interest conflicts), § 10.2-2(a) (current-client conflicts), § 15.10 to § 15.10-2 (disqualification of judges), § 16.4-14(a) (conflicts and liability exposure), § 18.3-1 (communication with client) (OSB Legal Pubs 2015); and *Restatement (Third) of the Law Governing Lawyers* chapter 8 (conflicts of interest), § 20 (lawyer’s duty to inform and consult with client) (2000).

Motions and Affidavits to Disqualify or Change Judge Filed in Circuit Courts, March 1, 2021

Judges are required by Oregon's Code of Judicial Conduct to uphold and apply the law fairly, impartially, and without bias or prejudice. In addition, if any party to a case believes they cannot have a fair and impartial trial or hearing, they may file a motion to disqualify or change the judge presiding over their case under ORS Chapter 14. A party to a case may not file more than two motions to disqualify or change a judge on any case.

The Data

- Is listed by case type (criminal, civil, and domestic relations, etc.). Each listing then shows the county, case category within the case type, and the filer of the motion;
- Is presented as a cumulative total for the five-year period (January 1, 2016 through December 31, 2020) of the approximate number of motions to disqualify or change a judge; and
- Is a snapshot, but not a complete picture of these motions and orders, as explained below. It has not been clarified or organized significantly, due to time constraints for providing this information.

Data Challenges and Assumptions

Some motions to disqualify or change a judge occur on the record and without a formal, written motion. In these situations, we can estimate the number of motions made by using the order to disqualify or change judge as a proxy for a motion when no motion is filed or entered in the case register.

If a court does not enter the motion in the case register using one of five specific codes noted below, this data in Appendix A will not reflect the motions to disqualify or change judge accurately in that court. The codes queried are:

1. Motion to Disqualify Judge
2. Motion to Change Judge
3. Order to Disqualify Judge (only included in the data if there is not a preceding Motion to Disqualify Judge or Motion to Change Judge)
4. Order to Change Judge (only included in the data if there is not a preceding Motion to Disqualify Judge or Motion to Change Judge)
5. Affidavits to Disqualify or Change Judge where unaccompanied by a Motion.

Courts have the option to relate a motion or order entered in the case register to the filing party. In those situations, the data will reflect the party that filed the motion, as entered by the court. There are party types that can be grouped together for practical purposes, but for this analysis the filing parties reflect exactly what is entered by the court unless there is no party related to the

motion/order, in which case that party will be listed as ‘Unknown Filer’. For example, for those entries that are identified as filed by the State, Assistant District Attorney, or District Attorney in the case data, there is a corresponding field for misdemeanor and felony cases. Yet this does not necessarily reflect all motions pursued by the State, nor do the remaining motions necessarily represent motions filed by defendants and their counsel, and the unknown filings are truly unknown.

What the data does not capture are scenarios in which courts are using nonstandard data entry, case “flags,” blanket affidavits of bias or prejudice, or informal resolutions to objections by parties to the assigned judge. That additional information stored on court documents cannot be queried and would have to be manually reviewed for each case. As such, this data only reflects the specific codes and related parties identified above and does not reflect with perfect accuracy these motions filed in circuit courts or other actions taken to address instances where a party believes they cannot receive an impartial hearing before a judge.

If you have questions or seek additional information, please contact Erin M. Pettigrew, Access to Justice Counsel for OJD: erin.m.pettigrew@ojd.state.or.us.

**Motions/Affidavits to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Felony and Misdemeanor**

Court	Felony	Misdemeanor	Total
Baker	35	32	67
Court Appointed Defense Counsel	8	4	12
Defendant	13	13	26
Deputy District Attorney	3	1	4
Plaintiff (State of Oregon)	10	13	23
Unknown Filer	1	1	2
Benton	27	22	49
Court Appointed Defense Counsel	4		4
Defendant		2	2
Privately Retained Defense Counsel	3	3	6
Unknown Filer	20	17	37
Clackamas	148	117	265
Attorney		4	4
Court Appointed Defense Counsel	79	48	127
Defendant	15	9	24
Privately Retained Defense Counsel	42	45	87
Unknown Filer	12	11	23
Clatsop	23	11	34
Attorney	1		1
Court Appointed Defense Counsel	6	4	10
Defendant	9	2	11
District Attorney	2		2
Privately Retained Defense Counsel	4	4	8
Unknown Filer	1	1	2
Columbia	22	19	41
Attorney		2	2
Court Appointed Defense Counsel	2	1	3
Defendant	15	12	27
Privately Retained Defense Counsel	2	1	3
Unknown Filer	3	3	6
Coos	189	101	290
Assistant DA		1	1
Attorney		2	2
Court Appointed Defense Counsel	85	49	134
Defendant	92	47	139
Deputy District Attorney	1		1
Privately Retained Defense Counsel	3	1	4
Unknown Filer	8	1	9
Crook	13	9	22
Attorney	1	2	3
Court Appointed Defense Counsel	9	5	14
Defendant	1	1	2
Privately Retained Defense Counsel		1	1

**Motions/Affidavits to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Felony and Misdemeanor**

Unknown Filer	2		2
Curry	6	8	14
Court Appointed Defense Counsel	1		1
Defendant	4	5	9
Plaintiff (State of Oregon)		1	1
Privately Retained Defense Counsel	1	2	3
Deschutes	255	174	429
Attorney	7	4	11
Court Appointed Defense Counsel	83	43	126
Defendant	6	1	7
Privately Retained Defense Counsel	75	47	122
Unknown Filer	84	79	163
Douglas	113	66	179
Attorney		1	1
Court Appointed Defense Counsel	30	35	65
Defendant	61	8	69
Plaintiff (State of Oregon)	1		1
Privately Retained Defense Counsel	10	6	16
Public Defender	2	4	6
Unknown Filer	9	12	21
Grant	8	13	21
Court Appointed Defense Counsel	3		3
Defendant	2	10	12
Plaintiff (State of Oregon)	1	1	2
Privately Retained Defense Counsel	2		2
Unknown Filer		2	2
Harney	2	5	7
Defendant	1		1
Unknown Filer	1	5	6
Hood River	1	2	3
Court Appointed Defense Counsel	1	1	2
Unknown Filer		1	1
Jackson	343	168	511
Defendant	258	135	393
Unknown Filer	85	33	118
Jefferson	56	6	62
County Counsel	1		1
Court Appointed Defense Counsel	14	6	20
Defendant	2		2
Plaintiff (State of Oregon)	32		32
Privately Retained Defense Counsel	6		6
Unknown Filer	1		1

**Motions/Affidavits to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Felony and Misdemeanor**

Josephine	269	297	566
Attorney	1	5	6
Court Appointed Defense Counsel	206	219	425
Defendant	27	10	37
District Attorney	3	3	6
Plaintiff (State of Oregon)	1	2	3
Privately Retained Defense Counsel	26	51	77
Unknown Filer	5	7	12
Klamath	4,450	7,151	11,601
Court Appointed Defense Counsel	19	2	21
Defendant	53	46	99
Deputy District Attorney	94		94
District Attorney		5	5
Plaintiff (State of Oregon)	3,325	5,527	8,852
Privately Retained Defense Counsel	11	4	15
Unknown Filer	948	1,567	2,515
Lake	94	120	214
Court Appointed Defense Counsel	6	3	9
Defendant	4	6	10
District Attorney	3	7	10
Plaintiff (State of Oregon)	79	99	178
Privately Retained Defense Counsel		1	1
Unknown Filer	2	4	6
Lane	19	7	26
Attorney		1	1
Court Appointed Defense Counsel	11		11
Privately Retained Defense Counsel	7	5	12
Unknown Filer	1	1	2
Lincoln	155	175	330
Attorney		6	6
Court Appointed Defense Counsel	60	35	95
Defendant	14	22	36
Plaintiff (State of Oregon)	2	1	3
Privately Retained Defense Counsel	33	58	91
Unknown Filer	46	53	99
Linn	38	18	56
Court Appointed Defense Counsel	5	2	7
Defendant	14	7	21
Plaintiff (State of Oregon)		2	2
Privately Retained Defense Counsel	5	2	7
Unknown Filer	14	5	19
Malheur	13	5	18
Court Appointed Defense Counsel	11	4	15

**Motions/Affidavits to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Felony and Misdemeanor**

Defendant	1	1	2
Privately Retained Defense Counsel	1		1
Marion	1,544	1,200	2,744
Attorney	12	11	23
Court Appointed Defense Counsel	845	700	1,545
Defendant	171	112	283
Plaintiff (State of Oregon)	4	2	6
Privately Retained Defense Counsel	156	123	279
Public Defender	3	2	5
Unknown Filer	353	250	603
Morrow	17	16	33
Defendant	7	1	8
District Attorney	1		1
Privately Retained Defense Counsel	2		2
Unknown Filer	7	15	22
Multnomah	172	273	445
Court Appointed Defense Counsel	7	20	27
Defendant	34	52	86
Plaintiff (State of Oregon)	9	2	11
Privately Retained Defense Counsel		1	1
Public Defender		1	1
Unknown Filer	122	197	319
Polk	14	12	26
Defendant	9	10	19
Plaintiff (State of Oregon)	1	1	2
Privately Retained Defense Counsel	2		2
Unknown Filer	2	1	3
Sherman	2	1	3
Defendant		1	1
Privately Retained Defense Counsel	1		1
Unknown Filer	1		1
Tillamook	12	21	33
Defendant	10	18	28
Plaintiff (State of Oregon)	1	1	2
Privately Retained Defense Counsel		1	1
Unknown Filer	1	1	2
Umatilla	537	918	1,455
City Attorney		1	1
Court Appointed Defense Counsel	5	7	12
Defendant	11	12	23
Deputy District Attorney	11	9	20
District Attorney	226	596	822

**Motions/Affidavits to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Felony and Misdemeanor**

Privately Retained Defense Counsel	2	3	5
Unknown Filer	282	290	572
Union	190	394	584
Attorney		2	2
Court Appointed Defense Counsel	53	27	80
Defendant	25	47	72
Deputy District Attorney		2	2
District Attorney	58	156	214
Plaintiff (State of Oregon)	49	139	188
Privately Retained Defense Counsel	3	6	9
Unknown Filer	2	15	17
Wallowa	15	12	27
Attorney	1		1
Court Appointed Defense Counsel	4	2	6
Defendant	7	7	14
District Attorney	2	3	5
Privately Retained Defense Counsel	1		1
Wasco	7	6	13
Defendant	4	2	6
Unknown Filer	3	4	7
Washington	319	88	407
Court Appointed Defense Counsel	10	2	12
Defendant	220	68	288
Plaintiff (State of Oregon)	38	8	46
Privately Retained Defense Counsel	31	4	35
Unknown Filer	20	6	26
Wheeler	4	1	5
Defendant	2	1	3
Privately Retained Defense Counsel	2		2
Yamhill	67	40	107
Defendant	38	16	54
Plaintiff (State of Oregon)	14		14
Unknown Filer	15	24	39
Total	9,179	11,508	20,687

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Civil (Other than Family, Juvenile, and Probate), Landlord Tenant, and Small Claims**

Court	Civil	Landlord Tenant	Small Claims
Baker	9		
Attorney	5		
Defendant	1		
Plaintiff	2		
Privately Retained	1		
Benton	35	3	1
Attorney	1		
Defendant	3	1	
Petitioner	1		
Plaintiff	2		
Unknown Filer	28	2	1
Clackamas	59	4	
Attorney	2		
Defendant	20	3	
Guardian Ad Litem	2		
Petitioner	1		
Plaintiff	28	1	
Privately Retained	4		
Unknown Filer	2		
Clatsop	6	4	
Attorney	3	1	
Defendant		2	
Plaintiff		1	
Unknown Filer	3		
Columbia	19	3	2
Attorney	9		
Defendant		3	
Plaintiff	6		2
Privately Retained	3		
Unknown Filer	1		
Coos	10	1	169
Attorney	3		
Defendant		1	
Plaintiff	4		118
Privately Retained	1		
Public Defender	1		
Unknown Filer	1		51
Crook	7		
Attorney	7		
Curry	7	2	4
Attorney	4		
Defendant	1		
Plaintiff		2	4
Privately Retained	2		

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Civil (Other than Family, Juvenile, and Probate), Landlord Tenant, and Small Claims**

Court	Civil	Landlord Tenant	Small Claims
Deschutes	76	7	2
Attorney	40		
Defendant	5		2
Plaintiff	2	4	
Privately Retained	25		
Unknown Filer	4	3	
Douglas	16	2	1
Attorney	1		
Defendant	4		
Plaintiff	9	2	1
Unknown Filer	2		
Grant	5		
Defendant	1		
Plaintiff	1		
Unknown Filer	3		
Harney	2		
Defendant	2		
Hood River		1	
Plaintiff		1	
Jackson	96	14	2
3rd Party Defendant	1		
3rd Party Plaintiff	1		
Attorney		1	
Defendant	29	10	
Interested Person	1		
Plaintiff	49	3	
Respondent	1		
Unknown Filer	14		2
Jefferson	7		
Attorney	2		
Plaintiff	2		
Unknown Filer	3		
Josephine	25	2	2
Attorney	9	1	
Court Appointed	1		
Defendant	1		
Plaintiff	9		2
Privately Retained	5	1	
Klamath	13	1	3
Attorney	3	1	
Defendant	4		
Plaintiff	3		
Privately Retained	2		
Unknown Filer	1		3

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Civil (Other than Family, Juvenile, and Probate), Landlord Tenant, and Small Claims**

Court	Civil	Landlord Tenant	Small Claims
Lake	13		
Defendant	8		
Plaintiff	3		
Unknown Filer	2		
Lane	39	3	1
Attorney	1		
Defendant	9	1	
Guardian Ad Litem	1		
Plaintiff	20	1	
Privately Retained	2		
Unknown Filer	6	1	1
Lincoln	12	2	
Attorney	1		
Defendant	4	1	
Plaintiff	6	1	
Unknown Filer	1		
Linn	13	6	1
3rd Party Defendant	1		
3rd Party Plaintiff	1		
Defendant		5	
Plaintiff	10		1
Respondent		1	
Unknown Filer	1		
Malheur	67	4	3
Attorney	2		
Court Appointed	7		
Defendant	1	1	
Petitioner	14		
Plaintiff	29		3
Privately Retained	4	3	
Unknown Filer	10		
Marion	1,056	1	1
Acting By and Through	1		
Assistant Attorney General	4		
Attorney	190		
Court Appointed	16		
Defendant	12	1	
Petitioner	57		
Plaintiff	74		
Privately Retained	15		
Unknown Filer	687		1
Morrow	14		1
Attorney	1		
Unknown Filer	13		1

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Civil (Other than Family, Juvenile, and Probate), Landlord Tenant, and Small Claims**

Court	Civil	Landlord Tenant	Small Claims
Multnomah	1,061	10	5
3rd Party Defendant	1		
3rd Party Plaintiff	1		
Attorney	15		
Claimant	1		
Defendant	58	3	
Petitioner	1		
Plaintiff	93	7	5
Privately Retained	3		
Unknown Filer	888		
Polk	11	3	
Defendant	2	3	
Plaintiff	6		
Unknown Filer	3		
Tillamook	5	2	
Defendant	4	1	
Plaintiff		1	
Unknown Filer	1		
Umatilla	171	59	55
Attorney	7		
Court Appointed	1		
Defendant		4	
Petitioner	8		
Plaintiff	62		28
Privately Retained	1	1	
Unknown Filer	92	54	27
Union	6	1	
Defendant	1		
Personal Representative		1	
Plaintiff	3		
Privately Retained	2		
Wallowa	8		
Attorney	3		
Court Appointed	2		
Plaintiff	1		
Privately Retained	2		
Wasco	5	1	
Defendant		1	
Plaintiff	3		
Privately Retained	2		

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Civil (Other than Family, Juvenile, and Probate), Landlord Tenant, and Small Claims**

Court	Civil	Landlord Tenant	Small Claims
Washington	274		3
3rd Party Defendant	1		
3rd Party Plaintiff	1		
Attorney	1		
Defendant	14		1
Interested Person	1		
Petitioner	6		
Plaintiff	244		2
Privately Retained	1		
Unknown Filer	5		
Yamhill	8	1	
Attorney	1		
Defendant		1	
Petitioner	3		
Plaintiff	2		
Unknown Filer	2		
Total	3,155	137	256

Yamhill: Just a quick point of fact...We have never filed a M/DQ a judge on a misdemeanor case. Of the 39 where the "filer" is unknown, at least 24 of the 39 were by the defense. If I had any way of knowing the other 15 cases, I would research each of them and, guessing by the other numbers, at most

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Baker	13	8		21
Agency		7		7
Attorney	2			2
Parent		1		1
Petitioner	4			4
Privately Retained Counsel	2			2
Respondent	5			5
Benton	48	2	3	53
Attorney	2			2
Objector			1	1
Petitioner	13			13
Privately Retained Counsel	3			3
Respondent	15			15
Unknown Filer	15	2	2	19
Clackamas	233	317	11	561
Attorney	28	7	6	41
Court Appointed		2		2
Deputy District Attorney		127		127
Parent		2		2
Personal Representative			2	2
Petitioner	70		1	71
Privately Retained Counsel	47	4	1	52
Respondent	84		1	85
State of Oregon		161		161
Unknown Filer	4	14		18
Clatsop	83	4	1	88
Attorney	10			10
Court Appointed	1			1
Department of Human Services		1		1
Guardian			1	1
Parent		3		3
Petitioner	37			37
Privately Retained Counsel	19			19
Respondent	16			16
Columbia	177	19	18	214
Attorney	38	2	6	46
Court Appointed		3		3
Objector			1	1
Parent		10	2	12
Personal Representative			5	5
Petitioner	83		1	84
Privately Retained Counsel	15	2	3	20
Respondent	35			35
Unknown Filer	6	2		8

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Coos	13	2	1	16
Attorney	2			2
Petitioner	3			3
Respondent	4			4
Unknown Filer	4	2	1	7
Crook	7	3		10
Attorney	4			4
Court Appointed		3		3
Petitioner	1			1
Respondent	1			1
Unknown Filer	1			1
Curry	19		2	21
Attorney	2		1	3
Petitioner	2		1	3
Privately Retained Counsel	5			5
Respondent	7			7
Unknown Filer	3			3
Deschutes	144	15	16	175
Attorney	23		1	24
Court Appointed		1		1
Devisee			1	1
Heir			2	2
Parent		12		12
Personal Representative			1	1
Petitioner	23		1	24
Privately Retained Counsel	60	2		62
Protected Person			1	1
Respondent	27			27
Unknown Filer	11		9	20
Douglas	33	16	6	55
Court Appointed		5		5
Guardian			1	1
Parent		8		8
Personal Representative			1	1
Petitioner	19		1	20
Public Defender		1		1
Respondent	14			14
Trustee			1	1
Unknown Filer		2	2	4
Grant	3	1	1	5
Agency		1		1
Attorney			1	1
Petitioner	1			1
Unknown Filer	2			2

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Harney		4		4
Parent		2		2
Unknown Filer		2		2
Hood River	1	1		2
Attorney		1		1
Respondent	1			1
Jackson	124	14	49	187
Attorney			9	9
Court Appointed		6		6
Devisee			1	1
Guardian			2	2
Guardian Ad Litem	1			1
Heir			1	1
Initiating Party	1			1
Intervenor	1			1
Juvenile		1		1
Personal Representative			5	5
Petitioner	56		11	67
Protected Person			3	3
Respondent	49			49
Trustee			2	2
Trustor			1	1
Unknown Filer	16	7	14	37
Jefferson	11	8		19
Court Appointed		2		2
Parent		3		3
Petitioner	6			6
Privately Retained Counsel	2	2		4
Respondent	3			3
Unknown Filer		1		1
Josephine	180	216	3	399
Attorney	94	4		98
Court Appointed		204		204
Objector			1	1
Parent		3		3
Personal Representative			1	1
Petitioner	6			6
Privately Retained Counsel	65	3		68
Respondent	6			6
Unknown Filer	9	2	1	12

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Klamath	75	22	4	101
Agency		1		1
Attorney	10	2		12
Co-Petitioner	1			1
Court Appointed		2		2
Guardian			2	2
Parent		8		8
Petitioner	27		1	28
Plaintiff			1	1
Privately Retained Counsel	4	2		6
Respondent	23			23
Unknown Filer	10	7		17
Lake	19	7	1	27
Petitioner	7			7
Respondent	8			8
Unknown Filer	4	7	1	12
Lane	29	1	1	31
Co-Petitioner	1			1
Defendant	1			1
Petitioner	5			5
Privately Retained Counsel	3			3
Respondent	17			17
Unknown Filer	2	1	1	4
Lincoln	33	7	2	42
Attorney	2			2
Court Appointed		4		4
Personal Representative			1	1
Petitioner	10			10
Privately Retained Counsel	6			6
Respondent	14			14
Unknown Filer	1	3	1	5
Linn	93	2		95
Attorney	7			7
Petitioner	46			46
Privately Retained Counsel	21			21
Respondent	16			16
Unknown Filer	3	2		5
Malheur	14	5		19
Court Appointed		2		2
Parent		3		3
Petitioner	2			2
Privately Retained Counsel	3			3
Respondent	6			6
Unknown Filer	3			3

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Marion	945	37	80	1,062

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Attorney	256		26	282
Conservator			1	1
Court Appointed		1		1
Parent		7		7
Personal Representative			4	4
Petitioner	64		12	76
Privately Retained Counsel	137	1	9	147
Respondent	101		1	102
Trustee			2	2
Trustor			1	1
Unknown Filer	387	28	24	439
Morrow	8	1	3	12
Petitioner	1			1
Respondent	2			2
Unknown Filer	5	1	3	9
Multnomah	82	21	11	114
Assistant Attorney General		2		2
Attorney	9		1	10
Court Appointed		4		4
Objector			2	2
Obligor	2			2
Parent		3		3
Petitioner	22		2	24
Privately Retained Counsel	12	1		13
Respondent	35			35
Unknown Filer	2	11	6	19
Polk	20	2	2	24
Attorney	3			3
Objector			1	1
Parent		2		2
Petitioner	15			15
Respondent	2			2
Unknown Filer			1	1
Sherman	2			2
Unknown Filer	2			2
Tillamook	22	2	4	28
Attorney			1	1
Devisee			1	1
Personal Representative			1	1
Petitioner	2		1	3
Privately Retained Counsel	2			2
Respondent	14			14
State of Oregon		1		1
Unknown Filer	4	1		5

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Umatilla	182	25	11	218

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Attorney	4			4
Petitioner	17			17
Privately Retained Counsel	8			8
Respondent	26			26
Unknown Filer	127	25	11	163
Union	29	44	12	85
Attorney	2			2
Court Appointed		6		6
Deputy District Attorney		2		2
District Attorney		5		5
Guardian			1	1
Heir			1	1
Juvenile		3		3
Personal Representative			4	4
Petitioner	7		2	9
Plaintiff		23		23
Privately Retained Counsel	3	3		6
Protected Person			4	4
Respondent	16			16
State of Oregon		1		1
Unknown Filer	1	1		2
Wallowa	8	1	3	12
Attorney			2	2
Court Appointed		1		1
Petitioner	3		1	4
Respondent	4			4
Unknown Filer	1			1
Wasco	4	2		6
Petitioner	1			1
Privately Retained Counsel	1			1
Respondent	2			2
Unknown Filer		2		2
Washington	232	17	2	251
Attorney	9			9
Court Appointed		4		4
Deputy District Attorney		2		2
Petitioner	43			43
Privately Retained Counsel	28			28
Respondent	26			26
State of Oregon		2		2
Unknown Filer	126	9	2	137
Wheeler	1			1

**Motions to Disqualify Judge Filed in Circuit Courts between 01/01/2016 and 12/31/2020
Domestic Relations, Juvenile, and Probate**

Court	Domestic Relations	Juvenile	Probate	Total
Respondent	1			1
Yamhill	44	17	1	62
Juvenile		3		3
Petitioner	16		1	17
Plaintiff		2		2
Privately Retained Counsel	10			10
Respondent	8			8
Unknown Filer	10	12		22
Total	2,931	843	248	4,022