Regards SB 807

Dear Members of the Oregon Legislative Assembly:

I am submitting this information in opposition to SB 807 as it is now proposed.

I have been a member of the Oregon State Bar for 46 years. I served as a manager for the Metropolitan Public Defender in Portland for 10 years. In the position of "Senior Felony Attorney" there, I presented all affidavits of prejudice to the Presiding Court in felony cases on behalf of the attorneys of my office at case assignment hearings. I served as the Director of the MPD Washington County Office for ten years. I served as the Executive Director of Multnomah Defenders, Inc. in Portland for 12 years until my retirement in 2021 and I established all office policies. I have also served as a Circuit Court Judge in Washington County.

It appears that the intent of the statute is to address so called "blanket" affidavits of prejudice by larger firms who can, due to their numbers, hamper the effective administration of courts, especially in the smaller counties with fewer judges available. The two Public Defense offices where I worked are the largest and the second largest in Oregon. At no time in my experience in those offices was there ever an office policy of filing "blanket" affidavits of prejudice against any judge. In fact, the policies were the exact opposite. The policy in each of those offices was that each individual attorney was expected to file, *or not file,* whatever motions were ethically necessary to protect the interests of their individual client, regardless of the perceived interests of the firm.

When many or most attorneys of a firm file affidavits of prejudice against a particular judge, it may appear that those offices have blanket policies; but they do not. Of course, the attorneys routinely confer with each other, and the interests of their clients are often similar so it's no surprise that patterns emerge; but every case is different and unique. Often, the perceived prejudice of a judge is due to their conscious or unconscious bias towards a particular subset of people. When your client is not in that group, the bias may be in your client's favor. The decisions are case by case.

And therein lies the fundamental flaw of this proposed legislation when it includes firms other than District Attorney's offices. The DA's offices of this State share one client only, the State of Oregon. Every law firm, including firms which are primarily doing public defense work, represents individual clients and each of those clients have a separate and independent right to file an affidavit of prejudice contesting the assignment of a judge to their case.

ORS 14.260(1) begins with "Any *party* to or any attorney appearing … (may file a motion contesting the assignment of a judge to their case)." The right belongs to the clients and the attorney is often the messenger. When I practiced law and when it was appropriate, I would often prepare the motion of prejudice to be supported by my *client's* affidavit when their good faith belief was different than mine. If it ever came to pass that a firm or public defense office was prohibited from filing such motions for six months as provided in Section (7), I would expect that every attorney in the firm would be ethically obligated to refuse appointments to all criminal cases or move to withdraw from any cases assigned to a judge who merited a challenge due to the loss of the right to file such an motion on behalf of their client. A client could waive their right, of course, but even this could ethically require the appointment of separate independent counsel to advise them on the issue.

Thank you for considering my comments,

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