

Written Testimony of Senior Judge Henry Kantor in Support of Senate Bill 807A

To Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the House Judiciary Committee:

My name is Henry Kantor. I am an Oregon Senior Judge. For over 22 years, I served as a Circuit Court Judge for Multnomah County. I presided over thousands of criminal cases as well as whatever other kind of case was assigned to my department. After my retirement, I continue to work as a senior judge on cases, mostly criminal cases, in counties across Oregon. I feel privileged to have been allowed to serve Oregonians in our systems of justice.

I write to support SB 807A. The bill is designed to respond to the practice of district attorneys who seek to disqualify elected judges from presiding over all or most of a court's criminal docket, what we call "blanket disqualification" to differentiate from disqualification of a judge in a particular case. The bill regulates the practice of blanket disqualification and, we hope, will discourage it.

Over my career in Multnomah County, the local district attorney regularly blanket-disqualified certain elected judges from the court's incredibly busy criminal docket. These judges most often were women or former criminal defense lawyers. I am happy to tell you that the current district attorney in Multnomah County has abandoned that practice as a matter of policy and that our current Attorney General does not blanket-disqualify judges, also as a matter of policy. To the best of my knowledge, both the Multnomah County District Attorney and the Oregon Attorney General are neutral on this bill and are willing to participate in any rule-making process initiated by the Oregon Supreme Court.

These blanket disqualifications are not brief interruptions in the court's docket or the judge's career. They often last months, even years and sometimes decades. Multnomah County's current Presiding Judge, Judith Matarazzo, was disqualified by the prior district attorney for several years from sitting on criminal cases before she was elected by her colleagues to become presiding judge. In Washington County, now Senior Judge James Fun was disqualified by most but not all deputy district attorneys from all felony cases for about eight months. Also in Multnomah County, two female judges, now senior or retired, were so traumatized by their lengthy unfair blanket disqualifications that they are unwilling to have their names used in this public proceeding, even though one of these judges retired more than 15 years ago.

In small counties, these blanket disqualifications put an unreasonable burden on the remaining judges or judges. Often, the State Court Administrator is required to assign a visiting judge from another county to help out. In large counties, these blanket disqualifications regularly cause the judge to be transferred to another docket. In all counties, the result is that judges who have been elected by their county citizens do not sit on some of the most important cases.

Sparked by personal experience and powerful passions for public justice and good government, my colleague Jennifer Williams has worked to bring this matter to you for your consideration. She surveyed the laws of our country and helped draft a bill which takes the best of existing Oregon law and that of other jurisdictions to come up with a fair and balanced plan to make district attorneys, who are elected by the very same people who elect the judges, think twice before utilizing existing procedures to disqualify elected judges from the criminal docket.

It is important to make clear that this bill does NOT change any part of existing law which governs any party's right to disqualify any judge in any particular case. It does not change the way parties and lawyers in civil and family cases might disqualify a judge who they believe could be not fair in a particular case. It does not change the way a district attorney or criminal defense lawyer might disqualify a judge who they believe could not be fair in a particular case.

This bill also does not seek to limit disqualifications of any "non-elected" judges. This means that judges who have been appointed by a governor to fill a vacancy but who have not yet stood for election do not fall within the reach of this bill. This also means that referees or pro-tem judges, while appointed and approved by judges, are not covered by this bill.

This bill is the most narrow approach to a discrete problem. It establishes a process which comes into play *only* when a district attorney or public defender acts in a way to prevent an elected judge from working on every court's busiest docket – the criminal docket – to avoid interference with the orderly administration of justice. It provides a more meaningful opportunity for the elected judge whose fairness is challenged to respond and to have a disinterested judge resolve the dispute with or without the need for a hearing.

This bill is simple and efficient. It is objective and readily subject to controlling rules and precedent. We know that our Supreme Court will fill in the gaps with helpful procedural rules, after hearing from all interested people. Any party who feels they did not receive a legal result may seek review in appellate courts which have not been unwilling to reverse in similar situations.

Some may wonder how or why any judge would ever declare that another judge could not be fair to the parties in *all* criminal cases. This must mean that they do not trust our processes – they do not trust our trial judges who take oaths to follow the law and who follow the law every day; they do not trust our appellate judges who routinely determine whether a trial judge has failed to follow the law. They do not acknowledge that over 35 states have processes similar to those established by SB 807A – and that those states have not experienced the unfairness and doubt worried about by opponents of this bill.

To be sure, district attorneys are incredibly important to our system of justice. The vast majority are principled and dedicated. Although I tried to write a summary of why their role is invaluable, I found the best explanation on the Oregon District Attorneys Association's website:

“Each county in the state of Oregon has an elected district attorney who is charged with *seeking the truth and pursuing justice* under the law on criminal matters that occur in his or her jurisdiction.

“Prosecutors, by law, wear many hats. They are *administrators of justice, seekers of truth, advocates for the people, officers of the court and protectors of the rights of all people* under Oregon law, the Oregon Constitution and the United States Constitution.

“*The primary goal of a prosecutor is to seek the truth and pursue justice* for victims, the state of Oregon, suspects and for defendants. Prosecutors work with law enforcement agencies to investigate and hold people accountable for violating Oregon law. The job of a prosecutor is not to simply to charge and convict. *There are many laws, ethical rules and guidelines through which prosecutors are held accountable* to the people.”¹

This explanation contrasts with the duties of Oregon criminal defense lawyers as taken from the Office of Public Defense Services’ Best Practices:

‘Public defense providers should formally recognize a paramount purpose to ensure zealous, high quality representation for each client.’²

For these reasons, it is right and just that district attorneys as integral participants in our criminal justice system be accountable for seeking to remove an elected judge from a court’s criminal docket. Although they are not known to have utilized the blanket disqualification process as often, including public defenders in this bill is our way of showing fairness.

Respectfully submitted by: Senior Judge Henry Kantor judgekantor@gmail.com

¹ <https://www.oregonda.org/your-das-what-we-do-1> (last visited on Feb. 24, 2023) (emphasis added).

² <https://www.oregon.gov/opds/provider/StandardsBP/BestPractices.pdf> (last visited on Feb. 24, 2023).