

May 6, 2023

Dear Chair Kropf, Vice-chairs Wallan and Andersen, and House Judiciary Committee Members:

I am a retired public defender who has practiced law since 1989. I support SB 807A, which would amend ORS 14.260, the statute which allows an attorney or party to disqualify a judge based on a belief of bias. SB 807A is needed because, as presently written, ORS 14.260 has been interpreted as allowing an attorney to intentionally misrepresent facts or law to a court.

In Oregon, attorneys are bound by a code of ethics, and complaints that an attorney has violated ethical standards are investigated by the Disciplinary Counsel's Office of the Oregon State Bar. On its face, Oregon's ethical code would appear to flatly prohibit any attorney from making any misrepresentation of fact, to any court, under any circumstance — attorneys shall not “knowingly make a false statement of fact or law to a tribunal,” or “knowingly offer evidence that the lawyer knows to be false.” In general, the Bar has zealously enforced these rules of ethical conduct, and rigorously sanctioned attorneys who make knowing misrepresentations to a court.

However, in 2021, the Disciplinary Counsel's Office determined that the existing wording of ORS 14.260 requires an exception to the rules requiring an attorney to act honestly when making representations to a court. This decision was based on a complaint received by the Oregon State Bar in 2020 about a district attorney who had filed a memorandum containing multiple material misrepresentations about a judge's actions and rulings in support of her motion to disqualify the judge from hearing criminal cases, and then immediately publicized her misrepresentations in the local media.

Following a 16-month long investigation, the bar's disciplinary counsel dismissed the complaint. *The disciplinary counsel did not exonerate the district attorney*—it did not find that her descriptions were accurate or truthful. Instead, the Disciplinary Counsel determined because Oregon's statute permits an attorney to disqualify a judge merely by claiming *to believe* that a judge is biased, the Disciplinary Counsel could only treat the DA's highly publicized and damaging misrepresentations as stating her beliefs or “perceptions,” and was therefore required to dismiss the complaint—*regardless of whether or not the DA's statements were truthful or accurate*. Put another way, disciplinary counsel determined that in the context of disqualifying a judge, the truthfulness of the DA's statements could not be considered.

With nearly 35 years of legal experience behind me, I have always appreciated my profession's commitment to ethical principles, and particularly to the principles which require attorneys to act truthfully when presenting facts to a court. The disciplinary counsel determination that the wording of ORS 14.260 prevents it from holding lawyers accountable—regardless of whether an attorney's statements are true—contradicts longstanding law which prohibits a lawyer from knowingly misstating anything to a tribunal. It also represents an unprecedented lowering of the ethical standards with which attorneys are expected to comply.

As an attorney who believes that the functioning of our legal system requires that attorneys *always* be held to the highest standards of honesty, I support the proposed change to ORS 14.260. It would bring Oregon law into line with the majority of states. It would still allow attorneys to disqualify judges for legitimate reasons, but should an attorney seek to disqualify a particular judge so frequently as to prevent the judge from hearing categories of cases, the proposed amendment provides a mechanism to require the attorney to demonstrate *facts* (rather than mere “perceptions” or “beliefs”) to show that the judge is biased.

SB 807A would amend the existing statute, which the Bar has interpreted as preventing it from enforcing traditional legal requirements of honesty and truthfulness to the courts. It would reinforce the Bar's traditional high standards, requiring attorneys to act truthfully at any time they make any representation in a court.

Please support SB 807A and send it to the floor with a do pass recommendation.

Sincerely,

s/ Anne Morrison
Anne Morrison