May 1, 2023

To: Chair Kropf and Members of the Oregon House Judiciary Committee
Fr: Kirsten E. Thompson, Senior Circuit Court Judge, Washington County

RE: Support for SB 807

I am a Senior Circuit Court Judge, writing to you on my own behalf, and not as a representative of OJD or Washington County Circuit Court. I retired at the end of January 2019 after 17 years of service in Washington County, Oregon, and currently serve as a senior judge and family law mediator in private practice.

As a busy court with a large population, Washington County manages its docket by assigning judges in different specialty areas. I served in criminal/civil, juvenile, and family law positions during my tenure on the bench. I also served as the presiding judge from 2011 – 2014, before transitioning to a hybrid docket of criminal/civil and family law cases. I served as the chief family law judge in 2017-2018.

When I served as presiding judge, I was tasked with assigning the 13 other judges to their respective dockets. I also assigned criminal and civil cases to specific judges for trial each week. Before assigning a judge to a docket, a presiding judge must consider whether large numbers of affidavits of prejudice under ORS 14.260 will prevent a judicial officer from effective service on the docket. Even in a multi-judge court, such as Washington County, blanket disqualifications have prevented assignment of judges to juvenile or criminal dockets or cases.

During my four years as presiding judge, several judges in active service received such high numbers of motions to disqualify from the largest public defense firm, or the district attorney's office that assignment of cases for trial was hampered or delayed. When I began my service as PJ, the court clarified our local rules for case assignment, to make it easier to track motions for disqualification accurately and to hold attorneys to the tight statutory deadlines required for these motions to be processed. I denied many motions for disqualification based on timing issues. This was the only tool available to reduce the incidence of these motions. There is no mechanism in the current statute to seek out the reasons that motions are filed, leaving no clear means to challenge them, or work out misunderstandings.

The way the current statute is crafted makes it extremely difficult to challenge a motion to disqualify. Though one of my colleagues did challenge a disqualification, the motion was nevertheless granted by a visiting judge. This is not surprising as it is virtually impossible to prove that the attorney's belief is in bad faith or the motion filed for purposes of delay. **The existing statute leaves judges who have been duly elected by the voters hampered in their efforts to serve the public and assist the court system with timely disposition of cases.** The judges who are disqualified by these motions are not informed why they are disqualified, and have no means to respond or take corrective action. Appellate courts are not afforded the opportunity to review for legal error.

As a result of blanket disqualifications, a presiding judge may simply quit assigning certain cases to certain judges, reassign a judge to different docket if possible, or assign cases in such a way that motions to disqualify are "burned up" by the attorneys. Districts which have fewer judges are impacted by blanket disqualifications in the worst way, but larger districts are also hampered by these practices.

The proposed modification to the statute would provide a mechanism to examine the reasons behind blanket disqualifications when they occur. As the examination is not automatic, it is likely that the parties would have some incentive to work out differences prior to a hearing on the topic. District Attorneys' offices, and defense providers would have more reason to pause and consider prior to filing "blanket" disqualification motions on the criminal and juvenile dockets.

Judges are accustomed to attorneys and litigants disagreeing with each other and with them. Judges have an ethical duty to recuse themselves in cases of actual conflict, and they do. This statute would not affect that process.

Like most judges, I have been disqualified from cases from time to time. I respect the right of litigants and attorneys to file timely motions to disqualify based on good faith beliefs. It is part of the process that fosters confidence in case outcomes in much the same manner as appeals, which help to clarify the law for all. Unlike appeals, however, blanket disqualifications stop the conversation from moving forward. Neither party is given a meaningful opportunity to challenge or defend the basis for the disqualification. The trial courts' hands are tied, and business is slowed with resulting inconvenience and expense.

I respectfully urge the Judiciary Committee to approve SB 807.