Five Retired Circuit Court Judges from Eastern Oregon urge the Legislature to vote No on Senate Bill 807

May 8, 2023

Dear Members of the Oregon Legislative Assembly:

We are senior judges from eastern Oregon. We have served both as circuit court or district court judges collectively for 96 years. After retirement, we have served collectively for 48 years as senior judges. Some of us have been district attorneys before we took the bench. The following views are personal and are not those of any court or organization with which we may be associated. We have a number of concerns about Senate Bill 807 that we wanted to share with you in this letter. We have attached a separate letter written by Senior Judge Yraguen to supplement this letter.

1. We believe that the reasonable person standard should be deleted from all threshold inquiries for the disinterested judge. It should not be a reasonable person standard. The inquiry should remain whether the attorney or the defendant has a good faith belief that they cannot have an impartial hearing before that judge. See ORS 14.260(1). Because judges don't announce on the record that they are prejudiced against a particular party or attorney, or that they intend to treat a particular party or attorney unfairly it is very difficult to prove by an objective standard that a judge is prejudiced against that party or attorney. Bias or prejudice usually can only be proven by circumstantial evidence. Sadly, we have all seen in our careers judges who are in fact prejudiced against a particular party, or lawyer. Bias or prejudice is often a subtle thing. We have seen several Judges in Eastern Oregon who have been the subject of recurring affidavits by district attorneys over the last 30 years. Several of these blanket or recurring affidavits we believe were justified under the circumstances. We have all served as presiding judges in our judicial districts and are familiar with running a court system. Although it is a challenge for court staff to schedule the criminal docket when there are recurring affidavits filed against a judge, the problems are not usually insurmountable. This is particularly true with the technologies available today through Webex and teleconferences. We have all been removed from cases by affidavits filed pursuant to ORS 14.260. Although we don't like being accused of being unfair, it is the perception of the lawyers and the parties that is important to the integrity of the judicial system. If a lawyer or party wants to disqualify us, most of the time we would prefer not to handle that case. There are plenty of other cases we can handle. We have all traded courtrooms to assist a judge who has been disqualified from a case. When another judge was disqualified from a case, we often would travel to that judges court house to hear the case and the disqualified judge would travel to our court house to hear some of our cases, including ones we had been disqualified on.

2. We recommend that all motions for judicial disqualifications include a declaration stating the facts and the reason for belief that bias or prejudice exists. This will help inform future motions and build a record and pattern if one exists as the new challenge process is utilized.

3. We recommend removing the ambiguous “motion or series of motions “that “effectively denies the judge assignment to a criminal or juvenile delinquency docket”. We feel this is too broad and unclear for both lawyers and judges as to when the trigger for this new relief is available. The bill should include a specific number of motions filed in a one year that would trigger the process.

4. We recommend removing all punitive sanctions on the moving party. It does not seem fair or appropriate to allow the disinterested judge to arbitrarily tie the hands and force the State, defendant, or crime victim to face a judge they feel they can’t have a fair trial in front of simply because the office is under a 12 month sanction. Senate bill 807 as amended would allow the neutral judge to prohibit the moving party from filing disqualification motions for up to one year. In our opinion constitutional issues and post conviction relief issues would likely result. For example, if a public defender filed a DQ motion against a judge and lost the hearing, and then was prohibited from filing another motion to disqualify that judge for one year, that attorney’s clients could claim post conviction relief or at a minimum a violation of their constitutional rights because they would not be able to disqualify a judge they had a good faith belief was biased against them.

5. Given the shortage of criminal defense attorneys, we don’t want to have to remove a lawyer and appoint new counsel solely because the client wants to disqualify a judge and the attorney is under a 1 year prohibition from filing disqualification motions.

The people coming before our courts ought to be able to have confidence that their case will be handled fairly. This is not about protecting judges or about judges getting their feelings hurt. It is not about making it easier to run a criminal docket. If an attorney or a party has a good faith belief that they cannot get a fair hearing before a judge they should be able to get a different judge.

In summary, we believe that Senate Bill 807 as currently amended creates more problems than it solves. We recommend a no vote.

Respectively Submitted,

Russ West, Senior Judge, retired Union and Wallowa County Circuit Judge

Gregory L. Baxter, Senior Judge, Retired Baker County Circuit Judge

Patricia Sullivan, Senior Judge, retired Malheur County Circuit Court Judge

J. Burdette Pratt, Senior Judge, retired Malheur County Circuit Judge

Francisco J. “Frank” Yraguen, Senior Judge, retired Malheur County Circuit Judge