

May 9, 2023

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

Yesterday I testified in favor of SB 807, expressing my grave concern that the Oregon State Bar has interpreted the wording of the existing statute as prohibiting it from sanctioning attorneys who make intentional misrepresentations of fact to a court when seeking to disqualify a judge. I expressed my unease with any statute that can allow an attorney to knowingly deceive or mislead a court. After listening to the comments and questions of committee members, I wish to add some additional thoughts, drawing on my own experience as a trial attorney, to articulate why SB 807 would not disadvantage any attorney, including district attorneys, who have a valid belief that a particular judge would be unfair.

Yesterday I described a situation where other defense attorneys, the district attorney and I all disqualified a judge from hearing cases because of our common concerns about his cognitive functioning. I have since recalled a different instance where I frequently recused a different judge because of my belief that he was incapable of dealing with defendants fairly. That belief was based upon the judge's particular rulings, decisions, and behavior. In the most egregious case, a young girl made statements suggesting that she had been touched in a sexual manner by one of two twin boys while at their mother's daycare. She could not identify which boy had been involved, and both were charged. Despite vehement objections by the other twin's attorney and myself that the state had failed to identify which individual had been involved in the alleged touching, and although the allegations, even if true, implicated only one boy, the judge overruled our objections, allowing the case to proceed against both.

Even in a juvenile case, the record of a sex crime can follow a juvenile for life. It may be used against the juvenile should he or she face future charges, and may significantly limit that juvenile's opportunities as an adult. Following the judge's decision to let both cases proceed, I could not believe that a judge who would knowingly allow an innocent child to be prosecuted for one of the most serious possible offenses could be fair to any defendant, and proceeded to disqualify that judge from most cases. My decision to disqualify the judge was not was not casually made. I handled only approximately one fifth of our county's criminal cases, but knew that my disqualifications would be highly disruptive to the local court.

My point is that my decision to disqualify a judge was always carefully considered, and never based upon a "sense," a "feeling," or a whim. Rather, my belief that a judge would be unfair rested on the judge's own specific, identifiable actions or decisions. Although the existing statute is very lenient in allowing attorneys to disqualify judges, I believe that any competent attorney should similarly be able, if required, to articulate specific reasons – facts – to support a claimed belief of bias.

Unlike a decision to remove a judge from a single case, an attorney's decision to recuse a judge from hearing entire categories of cases involves larger interests. It implicates the right of voters to choose their judges, and when courts are required to

arrange “judge transfers” between counties to accommodate the removal of a judge from particular dockets, it implicates the functioning of multiple courts and the costs involved in running those courts. For these reasons, it is appropriate to demand a higher level of accountability from an attorney who seeks to remove a judge from an entire docket by requiring the attorney to identify specific actions which underlie the attorney’s claimed belief, if asked to do so.

SB 807 provides a critically needed, practical and reasonable balance of interests by allowing attorneys to continue to disqualify a judge, even on multiple cases, while preventing attorneys from disqualifying a judge from an entire category of cases for invalid reasons -- an unsubstantiable “feeling” or “belief,” or in order to coerce favorable rulings, or because of malice, personal animosity, or purely political considerations. It also changes the statute to address my original concern about a statute which has been interpreted as allowing attorneys to intentionally misrepresent facts to a court.

Thank you for considering this additional testimony.

s/ Anne Morrison

Anne Morrison