
ASSEMBLY BILL NO. 7—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED DECEMBER 13, 2010

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the disqualification of certain judges. (BDR 1-320)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to judges; extending the time by which an answer to an affidavit seeking disqualification of a judge must be filed; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 When a party to litigation seeking to disqualify a judge, other than a Supreme
2 Court justice, files an affidavit alleging bias or prejudice, existing law requires the
3 judge to: (1) transfer the case to another department of the court in the district; (2)
4 request a judge of another district court to preside over the case; or (3) file a written
5 answer to the affidavit within 2 days after the affidavit is filed. (NRS 1.235) This
6 bill extends the time by which an answer to such an affidavit is required to be filed
7 from 2 days to 5 days after the affidavit is filed and clarifies that the days are
8 judicial days rather than calendar days.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 1.235 is hereby amended to read as follows:
2 1.235 1. Any party to an action or proceeding pending in any
3 court other than the Supreme Court, who seeks to disqualify a judge
4 for actual or implied bias or prejudice must file an affidavit
5 specifying the facts upon which the disqualification is sought. The
6 affidavit of a party represented by an attorney must be accompanied
7 by a certificate of the attorney of record that the affidavit is filed in



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1 good faith and not interposed for delay. Except as *otherwise*
2 provided in subsections 2 and 3, the affidavit must be filed:

3 (a) Not less than 20 days before the date set for trial or hearing
4 of the case; or

5 (b) Not less than 3 days before the date set for the hearing of any
6 pretrial matter.

7 2. Except as otherwise provided in this subsection and
8 subsection 3, if a case is not assigned to a judge before the time
9 required under subsection 1 for filing the affidavit, the affidavit
10 must be filed:

11 (a) Within 10 days after the party or the party's attorney is
12 notified that the case has been assigned to a judge;

13 (b) Before the hearing of any pretrial matter; or

14 (c) Before the jury is empaneled, evidence taken or any ruling
15 made in the trial or hearing,

16 ➔ whichever occurs first. If the facts upon which disqualification of
17 the judge is sought are not known to the party before the party is
18 notified of the assignment of the judge or before any pretrial hearing
19 is held, the affidavit may be filed not later than the commencement
20 of the trial or hearing of the case.

21 3. If a case is reassigned to a new judge and the time for filing
22 the affidavit under subsection 1 and paragraph (a) of subsection 2
23 has expired, the parties have 10 days after notice of the new
24 assignment within which to file the affidavit, and the trial or hearing
25 of the case must be rescheduled for a date after the expiration of the
26 10-day period unless the parties stipulate to an earlier date.

27 4. At the time the affidavit is filed, a copy must be served upon
28 the judge sought to be disqualified. Service must be made by
29 delivering the copy to the judge personally or by leaving it at the
30 judge's chambers with some person of suitable age and discretion
31 employed therein.

32 5. The judge against whom an affidavit alleging bias or
33 prejudice is filed shall proceed no further with the matter and shall:

34 (a) Immediately transfer the case to another department of
35 the court, if there is more than one department of the court in the
36 district, or request the judge of another district court to preside at the
37 trial or hearing of the matter; or

38 (b) File a written answer with the clerk of the court within ~~24~~ 5
39 *judicial* days after the affidavit is filed, admitting or denying any or
40 all of the allegations contained in the affidavit and setting forth any
41 additional facts which bear on the question of the judge's
42 disqualification. The question of the judge's disqualification must
43 thereupon be heard and determined by another judge agreed upon by
44 the parties or, if they are unable to agree, by a judge appointed:



1 (1) By the presiding judge of the judicial district in judicial
2 districts having more than one judge, or if the presiding judge of the
3 judicial district is sought to be disqualified, by the judge having the
4 greatest number of years of service.

5 (2) By the Supreme Court in judicial districts having only
6 one judge.

7 **Sec. 2.** This act becomes effective upon passage and approval.

