

Assembly Bill No. 7–Committee on Judiciary

CHAPTER.....

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:

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

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

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

Section 1. NRS 1.235 is hereby amended to read as follows:

1.235 1. Any party to an action or proceeding pending in any court other than the Supreme Court, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. Except as **otherwise** provided in subsections 2 and 3, the affidavit must be filed:

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

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

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

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

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

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

↳ whichever occurs first. If the facts upon which disqualification of the judge is sought are not known to the party before the party is



notified of the assignment of the judge or before any pretrial hearing is held, the affidavit may be filed not later than the commencement of the trial or hearing of the case.

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

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

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

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

(b) File a written answer with the clerk of the court within ~~14~~ **5 judicial** days after the affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

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

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

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

