

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55260-LL-87 (2/16)

Short Title: Reasons for Judge's Disqualification.

(Public)

Sponsors: Senator Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A JUDGE'S DISQUALIFICATION FROM A CASE SHALL
3 BE IN WRITING AND SHALL SPECIFY THE REASON FOR THE
4 DISQUALIFICATION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 7A of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 26A.

9 "Disqualification of Judges.

10 "**§ 7A-295. Disqualification of judge shall be in writing.**

11 A judge may disqualify himself or herself from presiding over a civil or criminal
12 proceeding for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in
13 G.S. 15A-1223, or for any other reason that renders the judge unable to perform the duties
14 required of the judge in the proceeding in an impartial manner. A judge who disqualifies
15 himself or herself, whether on the judge's own motion or in response to a motion of one of the
16 parties, shall do so in writing and shall state the specific reason or reasons for the
17 disqualification."

18 **SECTION 2.** G.S. 15A-1223 reads as rewritten:

19 "**§ 15A-1223. Disqualification of judge.**

20 (a) A judge on his or her own motion may disqualify himself or herself from presiding
21 over a criminal trial or other criminal proceeding.

22 (b) A judge, on motion of the State or the defendant, must disqualify himself or herself
23 from presiding over a criminal trial or other criminal proceeding if ~~he~~ the judge is:

24 (1) Prejudiced against the moving party or in favor of the adverse party; or

25 (2) Repealed by Session Laws 1983 (Regular Session 1984), c. 1037, s. 6.

26 (3) Closely related to the defendant by blood or marriage; or

27 (4) For any other reason unable to perform the duties required of ~~him~~ the judge
28 in an impartial manner.

29 (c) A motion to disqualify must be in writing and must be accompanied by one or more
30 affidavits setting forth facts relied upon to show the grounds for disqualification.

31 (d) A motion to disqualify a judge must be filed no less than five days before the time
32 the case is called for trial unless good cause is shown for failure to file within that time. Good
33 cause includes the discovery of facts constituting grounds for disqualification less than five
34 days before the case is called for trial.



1 (e) A judge must disqualify himself or herself from presiding over a criminal trial or
2 proceeding if ~~he~~ the judge is a witness for or against one of the parties in the case.

3 (f) A judge may disqualify himself or herself from presiding over a criminal proceeding
4 for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in this
5 section, or for any other reason that renders the judge unable to perform the duties required of
6 the judge in the proceeding in an impartial manner. A judge who disqualifies himself or herself,
7 whether on the judge's own motion or in response to a motion of one of the parties, shall do so
8 in writing and shall state the specific reason or reasons for the disqualification."

9 **SECTION 3.** This act becomes effective July 1, 2009.