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HOUSE BILL 1378

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Graves, Jenkins, and Rodne

1 AN ACT Relating to disqualification of judges; and amending RCW  
2 4.12.040 and 4.12.050.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.12.040 and 2009 c 332 s 19 are each amended to  
5 read as follows:

6 (1) No judge of a superior court of the state of Washington shall  
7 sit to hear or try any action or proceeding (~~when it shall be~~  
8 ~~established as hereinafter provided that said judge is prejudiced~~  
9 ~~against any party or attorney, or the interest of any party or~~  
10 ~~attorney appearing in such cause)) if that judge has been  
11 disqualified pursuant to RCW 4.12.050. In such case the presiding  
12 judge in judicial districts where there is more than one judge shall  
13 forthwith transfer the action to another department of the same  
14 court, or call in a judge from some other court. In all judicial  
15 districts where there is only one judge, a certified copy of the  
16 (~~motion and affidavit~~) notice of disqualification filed in the  
17 cause shall be transmitted by the clerk of the superior court to the  
18 clerk of the superior court designated by the chief justice of the  
19 supreme court. Upon receipt the clerk of said superior court shall  
20 transmit the forwarded (~~affidavit~~) notice to the presiding judge~~

1 who shall direct a visiting judge to hear and try such action as soon  
2 as convenient and practical.

3 (2) The presiding judge in judicial districts where there is more  
4 than one judge, or the presiding judge of judicial districts where  
5 there is only one judge, may send a case for trial to another court  
6 if the convenience of witnesses or the ends of justice will not be  
7 interfered with by such a course and the action is of such a  
8 character that a change of venue may be ordered: PROVIDED, That in  
9 criminal prosecutions the case shall not be sent for trial to any  
10 court outside the county unless the accused shall waive his or her  
11 right to a trial by a jury of the county in which the offense is  
12 alleged to have been committed.

13 (3) This section does not apply to water right adjudications  
14 filed under chapter 90.03 or 90.44 RCW. Disqualification of judges in  
15 water right adjudications is governed by RCW 90.03.620.

16 **Sec. 2.** RCW 4.12.050 and 2009 c 332 s 20 are each amended to  
17 read as follows:

18 (1) Any party to or any attorney appearing in any action or  
19 proceeding in a superior court(~~(, may establish such prejudice by~~  
20 ~~motion, supported by affidavit that the judge before whom the action~~  
21 ~~is pending is prejudiced against such party or attorney, so that such~~  
22 ~~party or attorney cannot, or believes that he or she cannot, have a~~  
23 ~~fair and impartial trial before such judge: PROVIDED, That such~~  
24 ~~motion and affidavit is filed and called to the attention of the~~  
25 ~~judge before he or she shall have made any ruling whatsoever in the~~  
26 ~~case, either on the motion of the party making the affidavit, or on~~  
27 ~~the motion of any other party to the action, of the hearing of which~~  
28 ~~the party making the affidavit has been given notice, and before the~~  
29 ~~judge presiding has made any order or ruling involving discretion,~~  
30 ~~but the arrangement of the calendar, the setting of an action, motion~~  
31 ~~or proceeding down for hearing or trial, the arraignment of the~~  
32 ~~accused in a criminal action or the fixing of bail, shall not be~~  
33 ~~construed as a ruling or order involving discretion within the~~  
34 ~~meaning of this proviso; and in any event, in counties where there is~~  
35 ~~but one resident judge, such motion and affidavit shall be filed not~~  
36 ~~later than the day on which the case is called to be set for trial:~~  
37 ~~AND PROVIDED FURTHER, That notwithstanding the filing of such motion~~  
38 ~~and affidavit, if the parties shall, by stipulation in writing agree,~~  
39 ~~such judge may hear argument and rule upon any preliminary motions,~~

1 ~~demurrers, or other matter thereafter presented: AND PROVIDED~~  
2 ~~FURTHER, That no party or attorney shall be permitted to make more~~  
3 ~~than one such application in any action or proceeding under this~~  
4 ~~section and RCW 4.12.040.)) may disqualify a judge from hearing the~~  
5 ~~matter, subject to these limitations:~~

6 (a) Notice of disqualification must be filed and called to the  
7 attention of the judge before the judge has made any discretionary  
8 ruling in the case.

9 (b) Arranging the calendar, setting a date for a hearing or  
10 trial, ruling on an agreed continuance, issuing an arrest warrant,  
11 presiding over criminal preliminary proceedings under CrR 3.2.1,  
12 arraigning the accused, fixing bail, and presiding over juvenile  
13 detention and release hearings under JuCR 7.3 and 7.4 are not  
14 discretionary rulings within the meaning of this section.

15 (c) In counties with only one resident judge, the notice of  
16 disqualification must be filed not later than the day on which the  
17 case is called to be set for trial.

18 (d) A judge who has been disqualified under this section may  
19 decide such issues as the parties agree in writing or on the record  
20 in open court.

21 (e) No party or attorney is permitted to disqualify more than one  
22 judge in any matter under this section and RCW 4.12.040.

23 (2) This section does not apply to water right adjudications  
24 filed under chapter 90.03 or 90.44 RCW. Disqualification of judges in  
25 water right adjudications is governed by RCW 90.03.620.

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