

WRITTEN TESTIMONY IN OPPOSITION TO SB 2102

Senate Judiciary Committee on Senate Bill 2102

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This written testimony is presented in opposition to SB2102, which will require litigants or attorneys to provide a reason for seeking a change of judge in a legal proceeding. I am a licensed North Dakota attorney who practices civil litigation.

The right to a fair and impartial trial is a lynch pin of the North Dakota Court System. Our system of justice presumes that a judge is impartial when applying the law. The right to request a change of judge once without a reason has been part of North Dakota Law since it was the Dakota Territory. (Laws of Dakota Territory 1874-1875, sec. 285, ch. 35; Code of Criminal Procedure, sec. 285 (1877)). To request a change of judge, without cause, the litigant or attorney must do so very early in the process - no later than 10 days from the date of assignment, date of trial notice, or date of service of any ex parte order (whichever is earliest). Any demand for a change of judge must be made in good faith and without purposes of delay. And, the judge must not have ruled on any matter in which the moving party had an opportunity to be heard.

North Dakota's Code of Judicial Conduct 2.7 explains reasons for judicial disqualification: Judges can be disqualified when it "is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary..." The current right to demand a change of judge promptly at the start of the case furthers these very same purposes.

This right to request a change of judge, helps ensure a fair trial and preserves the public image of the judicial system by allowing the parties involved to remove a judge they perceive as biased or prejudiced. The current process to demand a change of judge does not delay cases.

Allowing the right to demand a change of judge, without reason is important for the following reasons:

1. Preserving Judicial Independence, Integrity, and Impartiality.

Judicial independence, integrity, and impartiality is not just about the absence of impartiality or bias but also the perception of fairness, impartiality, and bias. Litigants may have a variety of reasons that they may want a different judge, including judicial demeanor, judicial experience, past experiences with a particular judge, conflicts of interest, perceived or real bias, docket currency, or concerns about fairness. Requiring litigants to disclose their reasons for requesting a different judge risks creating an environment where perceptions of bias—real or imagined—are publicly scrutinized and potentially dismissed. By removing the requirement to state reasons, public confidence in the judiciary is upheld because that litigants feel secure in their ability to seek impartiality without fear of judgment or retaliation.

2. Avoiding the Chilling Effect on Justice.

We want a justice system that is fair for all. Requiring reasons for a change of judge may deter individuals from making such requests, even in situations where they have valid concerns. Many litigants fear that disclosing their reasons might:

- Offend or alienate the judge in question, leading to potential unintended consequences, including future cases where the Judge may preside.
- Subject them to scrutiny or questioning about their motives, compounding their stress during already difficult legal proceedings.

Allowing a judge to determine if a demand is reasonable has the potential to make the process adversarial between a party and the judge throughout the litigation process when the judge's role is to be impartial.

3. Protecting Judicial Economy.

As a practicing North Dakota attorney, who does litigation, I rarely request a change of judge under N.D.C.C. § 29-15-21. There is little delay when using the statute as currently written because there are multiple judges in each district and the Court is very efficient about reassignments. Delay is likely if the statute is changed to require including a reason for the requested change of judge because it will require a determination as to whether or not said request is reasonable. The current statute effectively prevents a delay in proceedings and promotes judicial economy.

I respectfully ask that you please OPPOSE Senate Bill No. 2102.



Debra L. Hoffarth