



January 10, 2024

Chairwoman Larson and members of the Judiciary Committee.

I am writing to express my opposition to SB 2102. I am a licensed North Dakota attorney who resides in Bismarck. I have been practicing in the area of civil litigation for 24 years and frequently represent North Dakotans before judges in courtrooms across the State.

In the United States, a fundamental underpinning of our system of government is the consent of the citizens. The overwhelming majority, even those charged with serious crimes, accept decisions from our judiciary because of the procedural safeguards intended to ensure the process is fair. One of these safeguards in North Dakota is the right to excuse a judge without justification.

I do not often exercise the excusal rights under N.D.C.C. § 29-15-21. In my experience, most attorneys rarely do so. However, I have had a client request to excuse a judge because he knew the judge in high school and vehemently disliked her. I have filed an excusal under § 29-15-21 because the client believed that a judge was involved in an intimate relationship with a relative of her opponent. I have filed an excusal because a client had been involved in a shouting match with the judge during a criminal proceeding while the client was a minor. I have filed an excusal because a client felt the judge was too chummy with the other attorney. I have filed an excusal because I told the client that I did not think the judge would be experienced enough to handle the facts of this particular case. In each of these cases, N.D.C.C. § 29-15-21 allowed my clients to exercise some control over the process. By exercising this right, these clients were also reassured that a decision would be made based upon the law and the facts, not on a petty or personal reason. Whether the legislature acknowledges it or not, this is what justice means to people. This is especially true because none of the reasons given, standing alone, would require excusal under any applicable ethical rules that govern judges.

Finally, I think it is important to point out that I do not recall ever seeing a litigant successfully challenge the fairness of a judge. At least part of the reason is because it is considered a fool's errand—as noted by Ralph Waldo Emerson, when you strike at a king, you best not miss. In this context, I believe the proposed amendment will have the effect of removing the excusal rights in all cases. I am not aware of any justification that justifies this result. Instead, removing this right will only serve to undermine the legitimacy of the process and unnecessarily encourage cynicism. This

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**Steven J. Leibel, Partner**

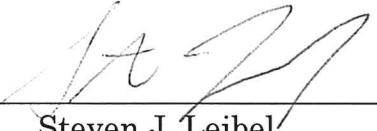
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benefits neither the judiciary nor the public and would be an unforced error by the legislature.

For these reasons, I respectfully oppose SB 2102.

Respectfully yours,

KNOLL LEIBEL LLP

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