

SUPREME COURT JUSTICES: RECUSALS

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House Joint Resolution P
Sponsor: Rep. Mark Meadows
Committee: Judiciary

Complete to 6-23-09

A SUMMARY OF HOUSE JOINT RESOLUTION "P" AS INTRODUCED 3-12-09

House Joint Resolution P would add Section 31 to Article VI of the State Constitution to clarify the circumstances under which justices of the Supreme Court must disqualify themselves.

HJR P requires the proposed constitutional amendment to be put before the voters at the next general election (November 2010). If approved by voters, the constitutional amendment would require the Legislature to put those provisions into statute.

HJR P would amend the State Constitution to clarify that justices of the Supreme Court would have to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. The circumstances under which justices would have to disqualify themselves would include, but not be limited to, those in which a justice:

- Has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts in dispute in the proceeding.
- Knows that he or she, or a relation, is 1) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party to the proceeding; 2) acting as a lawyer in the proceeding; 3) has more than a *de minimus* financial interest that could be substantially affected by the proceeding; or 4) likely to be a material witness in the proceeding.
- Knows that he or she, individually or as a fiduciary (or certain relatives or members of the household), has an economic interest in the subject matter in controversy or in a party to the proceeding.
- Made a public statement while a judge or a judicial candidate that committed or appeared to commit the justice to reach a particular result or rule in a particular way in the proceeding or controversy.
- Served as a lawyer in the matter in controversy or was associated substantially as a lawyer in the matter during such association.
- Had, if the proceeding were one in which a governmental entity was a party, served in governmental employment and in that capacity, had personally and

substantially participated as a lawyer or public official concerning that particular proceeding or had publicly expressed an opinion regarding the particular matter in controversy.

- Was a material witness concerning the matter.
- Had previously presided as a judge over the matter in another court.

In addition, justices would be required to keep informed about their personal and fiduciary economic interests and would have to make reasonable efforts to keep informed about the personal economic interests of their spouses or domestic partners and minor children residing in their households.

“Person related to the justice” would mean a justice’s spouse or domestic partner, a person within the third degree of consanguinity or affinity to the justice or his or her spouse or domestic partner, and the spouse or domestic partner of the person within the third degree of consanguinity or affinity.

[“Consanguinity” is a relationship by blood. The proposal does not specify how the relationship would be determined (several state statutes specify that the civil law method be used). In general, first-degree consanguinity applies to a spouse, children, and parents. Second degree consanguinity applies to siblings, half-siblings, grandchildren, and grandparents. Third-degree consanguinity applies to uncles and aunts, nephews and nieces, great grandparents, and great grandchildren.

“Affinity” is a relationship by marriage. In general, affinity in the first degree applies to stepchildren, stepparents, mother-in-law, and father-in-law. Second-degree affinity applies to stepbrothers and stepsisters, brothers-in-law, sisters-in-law, step grandchildren, and step grandparents. Third degree applies to step uncles and aunts, step nephews and nieces, step great grandparents, and step great grandchildren.]

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.