

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AJR49)

Received: 03/06/2012

Received By: **rchampag**

Wanted: **Today**

Companion to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing: **Mike**

May Contact:

Drafter: **rchampag**

Subject: **Constitutional Amendments**

Addl. Drafters:

Extra Copies: **TKK, PJH, SRM**

Submit via email: **YES**

Requester's email: **Rep.Hebl@legis.wisconsin.gov**

Carbon copy (CC:) to: **Chris.McKinny@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Judicial disqualification

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rchampag 03/06/2012	mduchek 03/06/2012	rschluet 03/06/2012	_____	mbarman 03/06/2012	mbarman 03/06/2012	

FE Sent For:

<END>

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AJR49)

Received: 03/06/2012

Received By: rchampag

Wanted: Today

Companion to LRB:

For: Gary Hebl (608) 266-7678

By/Representing: Mike

May Contact:

Drafter: rchampag

Subject: Constitutional Amendments

Addl. Drafters:

Extra Copies: TKK, PJH, SRM

*email to CHRIS McKinney
as well*

Submit via email: YES

Requester's email: Rep.Hebl@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Judicial disqualification

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rchampag	<i>(initials)</i>	<i>(signature)</i>	==		<i>(circled)</i>	

3/6/12
SRM
11

<END>

Jacket!

A judge shall disqualify himself or herself from any civil or criminal action or proceeding when of the following situations occurs:



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3811/1
TKK:jld:jm

2011 BILL

1 AN ACT *to create* 757.19 (2) (h) of the statutes; **relating to:** judicial
2 disqualification based on campaign financial support.

Analysis by the Legislative Reference Bureau

Current law requires a supreme court justice and a judge in the court of appeals, in circuit court, and in municipal court (judge) to disqualify himself or herself from a civil or criminal action or proceeding (action) under certain circumstances, including when a judge is related to any party or counsel to the action, when a judge is a party or a material witness in the action, when a judge has a significant financial or personal interest in the outcome of the action, and when a judge determines that he or she cannot, or it appears he or she cannot, act in an impartial manner.

This bill requires a judge to disqualify himself or herself from an action if, as a candidate for judicial office and within the past four years, the judge received campaign financial support of \$1,000 or more from a party to the action. The bill specifies that financial support includes campaign contributions, independent contributions made on behalf of the judge, and independent contributions made against the judge's opponent. In the event that a judge must disqualify himself or herself under the condition established in the bill, the judge may disclose the reason for disqualification and ask the parties and the lawyers of the parties to consider whether to waive disqualification. If the party who is opposed to the party who

BILL

provided campaign financial support to the judge waives disqualification, the judge may participate in the action.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 757.19 (2) (h) of the statutes is created to read:

2 757.19 (2) (h) 1. In this paragraph:

3 a. "Candidate" has the meaning given in s. 11.01 (1).

4 b. "Contribution" has the meaning given in s. 11.01 (6).

5 c. "Party" includes an immediate family member of a party, a party's business
6 or business partner or associate, an attorney or law firm representing a party, and
7 a partner or associate of the attorney or law firm representing a party.

8 ~~a.~~ When a judge has received, as a candidate for judicial office and within the
9 past 4 years, campaign financial support from a party to the action or proceeding in
10 an amount of \$1,000 or more. ~~In this subdivision, "campaign financial support"~~
11 ~~includes~~ ^{including} campaign contributions, independent contributions made on behalf of the
12 judge, and independent contributions made against the judge's opponent. 

13 ~~a.~~ A judge who is required to disqualify himself or herself under this paragraph
14 may disclose on the record the basis of the judge's disqualification and may ask the
15 parties and their lawyers to consider, out of the presence of the judge, whether to
16 waive disqualification. If, following disclosure under this subdivision, the party who
17 is opposed to the party that provided campaign financial support to the judge
18 determines that the judge should not be required to disqualify himself or herself and
19 if the parties and the lawyers of the parties all agree, the parties may waive
20 disqualification of the judge and the judge, if willing, may participate in the action

BILL

1 or proceeding. The agreement or waiver shall be incorporated into the record of the
2 action or proceeding.

3 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3769/1
PJH:jld:rs

2011 BILL

1 AN ACT *to create* 757.19 (2) (h) of the statutes; **relating to:** an objective standard
2 for the disqualification of a judge or justice.

Analysis by the Legislative Reference Bureau

Under current law, a judge or justice must disqualify himself or herself from presiding over or deciding a legal proceeding or action if certain circumstances exist that would affect the judge's or justice's impartiality in the action, if the judge or justice determines that he or she is incapable of acting in an impartial manner, or if he or she determines that it appears that he or she cannot act in an impartial manner.

This bill requires a judge or justice to disqualify himself or herself from presiding over or deciding a legal proceeding or action if a reasonable person would question whether the judge or justice could act in an impartial manner.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 757.19 (2) (h) of the statutes is created to read:
4 757.19 (2) (h) When a reasonable person would question whether the judge can
5 act in an impartial manner.

6 (END)

(757.19(2)(intro.))



med

For the
FLOOR!

Today

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2011 ASSEMBLY JOINT RESOLUTION 49**

Bm ✓

Cren

- 1 **Relating to:** disqualification of a justice of the supreme court, court of appeals judge,
- 2 and circuit court judge.

Analysis by the Legislative Reference Bureau

This constitutional amendment, proposed to the 2011 legislature on first consideration, requires a justice of the supreme court, court of appeals judge, and * circuit court judge shall disqualify himself or herself from any civil or criminal action or proceeding when any of the following situations occurs:

- 1. When a reasonable person would question whether the justice or judge can act in an impartial manner. *four*
- 2. When a justice or judge has received, as a candidate for judicial office and * within the past *4* years, campaign financial support from a party to the action or proceeding in an amount of \$1,000 or more, including campaign contributions, independent contributions made on behalf of the justice or judge, and independent contributions made against the justice's or judge's opponent.

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

3 ***Resolved by the assembly, the senate concurring, That:***

4 **SECTION 1.** Section *11* of article VII of the constitution is created to read:

- 2 -

25
11

1

[Article VII] Section 11 A justice of the supreme court, court of appeals judge, and circuit court judge shall disqualify himself or herself from any civil or criminal action or proceeding when any of the following situations occurs:

(1) When a reasonable person would question whether the justice or judge can act in an impartial manner.

(2) When a justice or judge has received, as a candidate for judicial office and within the past 4 years, campaign financial support from a party to the action or proceeding in an amount of \$1,000 or more, including campaign contributions, independent contributions made on behalf of the justice or judge, and independent contributions made against the justice's or judge's opponent. A justice or judge who is required to disqualify himself or herself under this subsection may disclose on the record the basis of the justice's or judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the justice or judge, whether to waive disqualification. If, following disclosure under this subsection, the party who is opposed to the party that provided campaign financial support to the justice or judge determines that the justice or judge should not be required to disqualify himself or herself and if the parties and the lawyers of the parties all agree, the parties may waive disqualification of the justice or judge and the justice or judge, if willing, may participate in the action or proceeding. The agreement or waiver shall be incorporated into the record of the action or proceeding.

(END)

21