

March 18, 2009

S 659. DISQUALIFICATION OF JUDGES/PROCEDURE. Filed 3/18/09. *TO PROVIDE A PROCEDURE FOR DETERMINING WHEN A JUDGE SHOULD BE DISQUALIFIED FROM PRESIDING OVER A CASE.*

Enacts new Article 26A, Disqualification of Judges, of GS Chapter 7A, requiring that whenever a motion is filed by a party to a civil or criminal proceeding to disqualify a judge for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in GS 15A-1223 (Disqualification of judge), the judge disqualify him- or herself or request that the Chief Justice assign another judge to hear the motion. Allows the Chief Justice to exercise discretion in assigning the replacement judge. Provides that if the judge does not disqualify him- or herself and another judge is assigned by the Chief Justice to hear the motion, the judge hearing the motion must determine whether there is sufficient basis for concluding that the challenged judge could not perform the duties in an impartial manner. If there is sufficient basis for such a conclusion, the judge must grant the motion and enter an order of disqualification; if there is not sufficient basis for such a conclusion, then the judge must deny the motion and enter an order remanding the case back to the challenged judge. Allows the judge to impose sanctions if the judge finds that the motion was brought only to delay and without sufficient cause.

Provides that if a district court judge or a superior court judge disqualifies him- or herself, the judge must enter an order of disqualification and request that the chief district court judge or senior resident superior court judge assign another judge to hear the case.

Provides that a denial of a motion to disqualify a judge is not immediately appealable and is only reviewable by the appellate division on appeal from a final judgment.

Makes a conforming and a technical change to GS 15A-223.

Effective January 1, 2010.

Intro. by Rucho.

GS 7A, 15A