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The Idaho Association of Criminal Defense Attorneys, established in 1989, represents over 450 attorneys in private firms and public defender offices. The Board of Directors has collected comments on the proposed elimination of Idaho Criminal Rule 25 after considering the ADJs suggested reasons for doing so. As an organization, we request that Idaho Criminal Rule 25 remain unchanged.

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It is axiomatic that Idahoans accused of criminal offenses are guaranteed access to timely constitutionally sound adjudication. ICR 25 as it now exists promotes that access by allowing both the state and the defense to disqualify judges as needed to protect the interests of the state and the defense. As set out below, the reasons offered by the Administrative Law Judges for eliminating Rule 25 do not outweigh its value to the state and the defense.

COMMENTS

Reduces scheduling and travel challenges:

In many rural districts, judges already travel from county to county in the regular course of their duties. Travel to a county in a nearby district when needed would not impose much, if any, additional effort.

Further, Zoom and telephone allow remote access for many court proceedings without any need for travel at all.

And, lastly, most criminal cases arise in urban areas where alternative in-county judges are available. Since most cases arise in Judicial Districts with urban areas, the alleged problems of the rural districts which oversee the minority of cases should not drive a rule that applies to everyone.

Assists with identifying and resolving training and performance management:

Judges, attorneys, and criminal defendants are all human beings. Not all judges like all attorneys equally. Not all judges view all crimes equally. Not all judges treat all defendants equally. Not all attorneys like all judges equally. And not all defendants view all judges equally. ICR 25 allows attorneys who are aware of the strengths and preferences of the judges in their districts and the preferences of their clients, be they state or defendant, to disqualify a judge who, for whatever reason, is not well-suited to a particular case. This can be beneficial to the judges as well as the parties. Personal likes and dislikes are more likely to be honored and cases may be more likely to find their way to judges who have an expertise regarding a particular type of case.

Replacing the disqualification option with complaints to the ADJ about specific judges will not improve the efficiency of the courts. There is no clear authority for an ADJ to discipline, reprimand or require further training of another judge, so complaints would be of little value. Rather, complaints would just put counsel and the ADJ in a difficult position. In addition, the ADJ is already a busy judge with his or her own caseload as well as the additional responsibilities of the ADJ. That judge does not need to listen to complaints which he or she cannot effectively remedy.

Likewise, filing a complaint with the Judicial Council will not effectively replace ICR 25's automatic disqualification. Automatic disqualifications are rarely filed because of violations of the Code of Judicial Conduct. Disqualifications must be filed before the assigned judge has done anything of substance in the case at all. And, of course, complaints to the Judicial Council, even when valid, would not serve the goal of efficiency in the courts as such complaints would take much longer than a simple automatic disqualification motion. Further, encouraging Judicial Council involvement will only create an increase in hostility between the bench and bar.

By contrast, ICR 25 can be used to improve performance evaluation and training. Tracking ICR 25 disqualifications can show any relevant patterns in a judge's performance. If a judge is consistently disqualified in a certain type of case or by a particular attorney or in cases involving a particular class of defendants, the reasons for that can be evaluated and remedial measures taken. This will not only improve performance, but it will also improve the perception of the Bar and the public that the process and the judges in Idaho are fair.

Equitable caseloads:

The number of cases before the courts obviously will not change whether ICR 25 is eliminated or not. Given each party has only one automatic disqualification per case, the rebalancing of case loads for each judge should not be an onerous task.

And, as discussed above, should there be a judge who is consistently disqualified in a particular type of case or by particular parties, the obvious solution is remediation of the reasons for those disqualifications. That would improve the fairness and efficiency of the courts as opposed to simply compounding the problem of performance that is subpar.

Timely resolution of cases:

Automatic disqualifications do not result in excessive delays. Our clients see the delay as an acceptable consequence of the exercise of the rule. On the other hand, complaints to the ADJ or the Judicial Council as an alternative will most probably result in much more significant delays.

Interferes with vertical representation in criminal cases:

We do not see this as an actual problem. Even if it were, any interference with vertical representation in criminal cases is a problem for the public defender to resolve, not the courts.

Reduces the perception that justice differs depending on the judge:

Eliminating ICR 25 will not reduce the perception that justice differs depending on which judge hears a case. Again, judges are human beings. As such they differ from one another in how they manage the courtroom. They differ in everything: in demeanor, in scheduling, in instructing the jury, in sentencing. Judges have discretion and they all exercise that discretion differently.

The perception that justice differs depending on the judge is grounded in reality. If anything, eliminating ICR 25 will increase the perception that justice is not uniform because the parties will no longer have any opportunity to avoid a judge that for whatever reason they believe will not give them a fair trial.

Promotes appellate review of disputed legal issues:

If a judge makes an erroneous legal ruling, a citizen, if harmed by that ruling, will likely raise it as an error on appeal. Eliminating automatic disqualifications should not increase the number of erroneous rulings. (If it would do so, that would be a reason to preserve the Rule.) Elimination of ICR 25 will have no impact on which purely legal issues are raised on appeal.

Most judges are DQed because they exercise their discretion in favor of/against one party. Abuse of discretion review rarely results in a reversal because that standard of review is very deferential. Increasing the number of appeals from discretionary acts will result in more unpublished Court of Appeals decisions but will not improve the quality of judging. Plus, it is unfair to make the citizen or taxpayer bear the cost for appellate review.

Permits citizens to have legal disputes resolved by the judges they elected:

Idaho judges, with rare exceptions, are not subject to contested elections. Last election, only three judges faced a contested election. The only time most citizens will ever be able to vote against a judge is by exercising his or her right to an automatic disqualification under ICR 25.

Eliminate blanket disqualifications for purely personal reasons:

Many automatic disqualifications are filed because an attorney or office perceives that a particular judge harbors a dislike for the attorney or the office. By tracking the patterns of disqualifications, the courts can gain insight into where this is happening and why. And, as discussed above, the proper response to this is to remedy the perception, not to ignore it or make it impossible to act upon.

It is unlikely that there are any blanket disqualifications for other "personal reasons." Few attorneys would disqualify a judge with what they judge to be a bad sense of humor or an inconvenient law and motion day or other personal reasons if they believed that the judge otherwise runs a fair trial.

Fosters an independent and impartial judiciary:

Nothing about ICR 25 threatens a judge's independence and impartiality. Rather, the Rule increases impartiality insofar as it steers cases away from judges who demonstrate a lack of impartiality in particular cases. Nor does the Rule affect a judge's independence. To the contrary, it is the court's effectively unreviewable independence in the exercise of its discretion which creates the conditions where an automatic DQ rule is needed.

CONCLUSION

In conclusion, IACDL strongly encourages the preservation of ICR 25. It serves the State of Idaho and her citizens by promoting the efficient, fair, and legitimate operation of the criminal courts.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink that reads "Heidi Johnson". The signature is fluid and cursive, with a long, sweeping underline.

Heidi Johnson
President