
A BILL FOR AN ACT

To further amend title 4 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-12, 5-125 and 5-135, by amending section 124 for the purpose of disqualifying Justices of the Supreme Court from cases initiated by the Court or one or more of its Justices, officials, or employees, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Amendment. Section 124 of title 4 of the Code of the
2 Federated States of Micronesia is hereby amended to read as follows:

3 "Section 124. Disqualification of Supreme Court Justice.

4 (1) A Supreme Court Justice shall disqualify himself
5 in any proceeding in which his impartiality might reasonably
6 be questioned.

7 (2) A Supreme Court Justice shall disqualify himself
8 from any proceeding initiated by the Court or one or more of
9 its Justices, officials, or employees. This disqualifi-
10 cation shall not apply to temporary Justices PROVIDED,
11 however, that a temporary Justice shall disqualify
12 himself from a proceeding he himself has initiated.

13 (3) He shall also disqualify himself in the following
14 circumstances:

15 (a) where he has a personal bias or prejudice
16 concerning a party or his counsel, or personal knowledge of
17 disputed evidentiary facts concerning the proceeding;

18 (b) where in private practice he served as lawyer
19 in the matter in controversy, or a lawyer with whom he
20 previously practiced law served during such association as a
21 lawyer concerning the matter, or the Justice or such lawyer
22 has been a material witness concerning it. The term private
23 practice shall include practice with legal service or public
24 defender organizations;

25 (c) where he has served in governmental employ-

1 ment and in such capacity participated as counsel, adviser,
2 or material witness concerning the proceeding or expressed
3 an opinion concerning the merits of the particular case
4 in controversy;

5 (d) where he knows that he, individually or as a
6 fiduciary, or his spouse or minor child residing in his
7 household, has a financial interest in the subject matter in
8 controversy or in a party to the proceeding, or any other
9 interest that could be substantially affected by the outcome
10 of the proceeding;

11 (e) where he or his spouse, or a person within a
12 close relationship to either of them, or the spouse of such
13 a person is:

14 (i) a party to the proceeding, or an
15 officer, director, or trustee of a party;

16 (ii) acting as lawyer in the proceeding;

17 (iii) known by the Justice to have an interest
18 that could be substantially affected by the outcome of the
19 proceeding; or

20 (iv) to the Justice's knowledge likely to be
21 a material witness in the proceeding.

22 (14) Upon taking office and every year thereafter, a
23 Justice shall list as of record the personal and fiduciary
24 financial interests of himself and his spouse and minor
25 children residing in his household.

1 (45) For the purposes of this section the following
2 words or phrases shall have the meaning indicated:

3 (a) 'proceeding' includes pretrial, trial,
4 appellate review, or other stages of litigation;

5 (b) 'fiduciary' includes such relationships as
6 executor, administrator, trustee, and guardian;

7 (c) 'financial interest' means ownership of a
8 legal or equitable interest, however small, or a relation-
9 ship as director, adviser, or other active participant in
10 the affairs of a party, except that:

11 (i) ownership in a mutual or common invest-
12 ment fund that holds securities is not a 'financial
13 interest' in such securities unless the judge participates
14 in the management of the fund or if the outcome of the
15 proceedings could substantially affect the value of the
16 fund;

17 (ii) an office or membership in an educa-
18 tional, religious, charitable, or civic organization is a
19 'financial interest' in securities held by the organization
20 only if the outcome of the proceeding could substantially
21 affect the value of the securities;

22 (iii) the proprietary interest of a policy-
23 holder in a mutual insurance company, of a member of a
24 cooperative association, of a depositor in a mutual savings
25 association or credit union, or a similar proprietary

1 interest is a 'financial interest' in the organization only
2 if the outcome of the proceeding could substantially affect
3 the value of the interest;

4 (iv) ownership of Government securities is a
5 'financial interest' in the issuer only if the outcome of
6 the proceeding could substantially affect the value of the
7 securities.

8 (6) No Supreme Court Justice shall accept from the
9 parties to the proceeding a waiver of any ground for dis-
10 qualification enumerated in subsections (2) and (3) of this
11 section. Where the ground for disqualification arises only
12 under subsection (1) of this section, waiver may be accepted
13 provided it is preceded by a full disclosure on the record
14 of the basis for disqualification.

15 (7) A party may move to disqualify a Supreme Court
16 Justice for one or more of the reasons stated in subsections
17 (1), (2) or (3) of this section. Said motion shall be
18 accompanied by an affidavit stating the reasons for the
19 belief that grounds for disqualification exist, and shall be
20 filed before the trial or hearing unless good cause is shown
21 for filing it at a later time. Upon receipt of such a
22 motion, the Justice shall rule on it before proceeding
23 further in the matter, stating his reasons for granting or
24 denying it on the record."

25 Section 2. Transition.

1 (1) Notwithstanding subsection (6) of section 124 of title
2 4 of the Code of the Federated States of Micronesia, as amended by
3 this act, if subsection (2) of that section, as amended by this act,
4 would require the disqualification of a Justice already assigned to
5 hear a matter pending in the Trial Division of the Supreme Court on
6 the effective date of this act, the parties may waive such dis-
7 qualification.

8 (2) Notwithstanding subsection (6) of section 124 of title
9 4 of the Code of the Federated States of Micronesia, as amended by
10 this act, if subsection (2) of that section, as amended by this act,
11 would require the disqualification of a Justice already assigned to
12 the Appellate Panel in a matter pending in the Appellate Division of
13 the Supreme Court on the effective date of this act, the parties
14 may waive such disqualification.

15 (3) If the parties to a proceeding wish to waive
16 disqualification of a Justice pursuant to subsections (1) or (2) of
17 this section, they shall file notice of such waiver with the Court
18 within 15 calendar days after the effective date of this act.

19 (4) Notwithstanding subsection (7) of section 124 of title
20 4 of the Code of the Federated States of Micronesia, as amended by
21 this act, a party in a proceeding which is pending on the effective
22 date of this act may move to disqualify a Justice for the reasons
23 stated in subsection (2) of that section, as amended by this act,
24 pursuant to the terms of subsection (7) of that section, as amended
25 by this act, or within 15 calendar days of the effective date of

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1 this act, whichever is later.

2 (5) If a Justice is disqualified from a pending proceeding
3 pursuant to this act, such disqualification shall not invalidate any
4 orders or decisions he issued in the matter prior to the effective
5 date, PROVIDED, however, that a denial of a motion to disqualify
6 prior to the effective date shall not prevent application of this act
7 subsequent to the effective date.

8 Section 3. Effective date. This act shall take effect upon
9 becoming law. This act shall become law upon approval by the
10 President of the Federated States of Micronesia or upon its becoming
11 law without such approval.

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Date: May 16, 1989

Introduced by: 
Leo A. Falcam