

1 **Rule 63. Disability or disqualification of a judge.**

2 **(a) Substitute judge; Prior testimony.** If the judge to whom an action has been assigned is unable
3 to perform their ~~duties required of the court under these rules~~, then any other judge of that district or any
4 judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom
5 the case is reassigned may ~~in the exercise of discretion~~ rehear the evidence or some part of it.

6 **(b) Disqualification Motion to disqualify; affidavit.**

7 ~~(b)(1)(A)-(b)(1)~~ A party to ~~any an~~ action or the party's attorney may file a motion to disqualify a
8 judge. The motion ~~shall~~ must be accompanied by a certificate that the motion is filed in good faith and
9 ~~shall~~ must be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of
10 interest. The motion must also be accompanied by a request to submit for decision.

11 ~~(b)(1)(B)-(b)(2))~~ The motion ~~shall~~ must be filed after commencement of the action, but not later
12 than 21 days after the last of the following:

13 ~~(b)(1)(B)(i)-(b)(2)(A)~~ assignment of the action or hearing to the judge;

14 ~~(b)(1)(B)(ii)-(b)(2)(B)~~ appearance of the party or the party's attorney; or

15 ~~(b)(1)(B)(iii)-(b)(2)(C)~~ the date on which the moving party ~~learns or with the exercise of~~
16 ~~reasonable diligence knew~~ or should have ~~learned~~ known of the grounds upon which the motion
17 is based.

18 If the last event occurs fewer than 21 days ~~prior to~~ before a hearing, the motion ~~shall~~ must be filed as
19 soon as practicable.

20 ~~(b)(1)(C)-(b)(3)~~ Signing the motion or affidavit constitutes a certificate under Rule 11 and subjects
21 the party or attorney to the procedures and sanctions of Rule 11.

22 ~~(b)(4)~~ No party may file more than one motion to disqualify in an action, unless the second or
23 subsequent motion is based on grounds that the party did not know of and could not have known of at
24 the time of the earlier motion.

25 ~~(b)(5)~~ If timeliness of the motion is determined under paragraph (b)(2)(C) or paragraph (b)(4), the
26 affidavit supporting the motion must state when and how the party came to know of the reason for
27 disqualification.

28 ~~(b)(2)-(c)~~ **Reviewing judge.**

29 ~~(c)(1)~~ The judge ~~against whom~~ who is the subject of the motion ~~and affidavit are directed~~ shall
30 must, without further hearing or a response from another party, enter an order granting the motion or
31 certifying the motion and affidavit to a reviewing judge. The judge ~~shall~~ may take no further action in
32 the case until the motion is decided. If the judge grants the motion, the order ~~shall~~ will direct the
33 presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial
34 Council to assign another judge to the action or hearing. The presiding judge of the court, any judge
35 of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council
36 may serve as the reviewing judge.

37 ~~(b)(3)(A)-(c)(2)~~ If the reviewing judge finds that the motion and affidavit are timely filed, filed in
38 good faith and legally sufficient, the reviewing judge shall assign another judge to the action or
39 hearing or request the presiding judge or the presiding officer of the Judicial Council to do so .

40 ~~(b)(3)(B)-(c)(3)~~ In determining issues of fact or of law, the reviewing judge may consider any part
41 of the record of the action and may request of the judge who is the subject of the motion ~~and affidavit~~
42 an affidavit ~~responsive~~ responding to questions posed by the reviewing judge.

43 ~~(b)(3)(C)-(c)(4)~~ The reviewing judge may deny a motion not filed in a timely manner.

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