

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 ~~the his or her duties required of the court under these rules~~, then any other judge of that district  
4 or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge  
5 to whom 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 or declaration.**

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 or declaration under penalty of Utah Code Section 78B-5-705  
10 stating facts sufficient to show bias, prejudice or conflict of interest. The motion must also be  
11 accompanied by a request to submit for decision.

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

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

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

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

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

21 ~~(b)(1)(C)-(b)(3)~~ Signing the motion or affidavit or declaration constitutes a certificate under Rule  
22 11 and subjects the party or attorney to the procedures and sanctions of Rule 11.

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

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

29 **(b)(2)-(c) Reviewing judge.**

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

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

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

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