

Senator Kirk A. Cullimore proposes the following substitute bill:

**JOINT RESOLUTION TO AMEND THE RULES OF CIVIL
PROCEDURE ON DISQUALIFICATION OF A JUDGE**

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE

General Description:

This joint resolution amends the Utah Rules of Civil Procedure, Rule 63, regarding the disqualification of a judge.

Highlighted Provisions:

This resolution:

- ▶ amends the Utah Rules of Civil Procedure, Rule 63, on disqualifying a judge without cause and for cause; and
- ▶ makes technical and conforming changes.

Special Clauses:

None

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule 63, Utah Rules of Civil Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend



26 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of
27 all members of both houses of the Legislature:

28 Section 1. **Rule 63**, Utah Rules of Civil Procedure is amended to read:

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

30 **(a) Disqualification of a judge without cause.**

31 **(a) (1) Motion to disqualify without cause.**

32 (a) (1) (A) In an action pending in a court in a district with more than 5 judges, each
33 side is entitled to file a motion to disqualify one judge without cause, and if the motion is
34 timely under paragraph (a) (2), the motion must be granted.

35 (a) (1) (B) Even if two or more parties on one side of an action have adverse or hostile
36 interests, an action, whether single or consolidated, must be treated as only having two sides
37 for purposes of a motion to disqualify a judge without cause.

38 (a) (1) (C) In an action, a side is not entitled to more than one disqualification of a
39 judge without cause.

40 (a) (1) (D) Regardless of when a party joins an action, a party is not entitled to a
41 motion to disqualify a judge without cause if the motion is untimely under paragraph (a)(2).

42 (a) (1) (E) Nothing in this rule precludes the right of any party to file a motion to
43 disqualify a judge for cause under paragraph (b).

44 **(a) (2) Filing a motion to disqualify a judge without cause.**

45 (a) (2) (A) In filing a motion to disqualify a judge without cause, a party is not required
46 to state any reason for disqualifying the judge, but the party must attest in good faith that the
47 motion is not being filed:

48 (a) (2) (A) (i) for the purpose to delay any action or proceeding; or

49 (a) (2) (A) (ii) to disqualify the judge on the grounds of race, gender, or religious
50 affiliation.

51 (a) (2) (B) The motion must be filed:

52 (a) (2) (B) (i) on the side of a plaintiff or petitioner, within seven days after the day on
53 which a judge is first assigned to the action or proceeding; or

54 (a) (2) (B) (ii) on the side of a defendant or respondent, before or at the time a
55 responsive pleading to a complaint or petition is filed.

56 (a) (2) (C) A motion to disqualify a judge without cause must be accompanied by a

57 request to submit for decision.

58 (a) (2) (D) Failure to file a timely motion precludes the disqualification of a judge
59 under this paragraph (a).

60 **(a) (3) Assignment of action.**

61 (a) (3) (A) Upon filing a motion, the judge assigned to the action must take no further
62 action in the case.

63 (a) (3) (B) The presiding judge must promptly reassign the action to another judge.

64 (a) (3) (C) If the presiding judge is the judge assigned to the action for which a motion
65 to disqualify without cause has been filed, the associate presiding judge must promptly reassign
66 the action to another judge.

67 (a) (3) (D) If the presiding judge, or associate presiding judge, is unable to assign the
68 action to another judge within the court, the judge may transfer the case to a court in another
69 county in accordance with Utah Code Section [78B-3-309](#).

70 **(a) (4) Exceptions.**

71 (a) (4) (A) Notwithstanding paragraphs (a)(1), (a)(2), and (a)(3), a party is not entitled
72 to disqualify a judge without cause:

73 (a) (4) (A) (i) in any proceeding regarding a petition for postconviction relief under
74 Rule 65C;

75 (a) (4) (A) (ii) on a petition to modify child custody, child support, or spousal
76 maintenance, unless the judge assigned to the action is not the same judge assigned to any of
77 the previous actions between the parties;

78 (a) (4) (A) (iii) in an action on remand from an appellate court; or

79 (a) (4) (A) (iv) if, under paragraph (a)(3)(D), the presiding judge, or associate presiding
80 judge, is unable to transfer the case to a court in another county in accordance with Utah Code
81 Section [78B-3-309](#).

82 **(b) Disability or disqualification for cause.**

83 ~~[(a)]~~ **(b) (1) Substitute judge; Prior testimony.** If the judge to whom an action has
84 been assigned is unable to perform his or her duties, then any other judge of that district or any
85 judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The
86 judge to whom the case is reassigned may rehear the evidence or some part of it.

87 ~~[(b)]~~ **(b) (2) Motion to disqualify; affidavit or declaration.**

88 ~~[(b)(1)]~~ (b) (2) (A) A party to an action or the party's attorney may file a motion to
89 disqualify a judge for cause. The motion must be accompanied by a certificate that the motion
90 is filed in good faith and must be supported by an affidavit or unsworn declaration as described
91 in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show
92 bias, prejudice or conflict of interest. The motion must also be accompanied by a request to
93 submit for decision.

94 ~~[(b)(2)]~~ (b) (2) (B) The motion must be filed after commencement of the action, but
95 not later than 21 days after the last of the following:

96 ~~[(b)(2)(A)]~~ (b) (2) (B) (i) assignment of the action or hearing to the judge;

97 ~~[(b)(2)(B)]~~ (b) (2) (B) (ii) appearance of the party or the party's attorney; or

98 ~~[(b)(2)(C)]~~ (b) (2) (B) (iii) the date on which the moving party knew or should have
99 known of the grounds upon which the motion is based. If the last event occurs fewer than 21
100 days before a hearing, the motion must be filed as soon as practicable.

101 ~~[(b)(3)]~~ (b) (2) (C) Signing the motion or affidavit or declaration constitutes a
102 certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of
103 Rule 11.

104 ~~[(b)(4)]~~ (b) (2) (D) No party may file more than one motion to disqualify in an action,
105 unless the second or subsequent motion is based on grounds that the party did not know of and
106 could not have known of at the time of the earlier motion.

107 ~~[(b)(5)]~~ (b) (2) (E) If timeliness of the motion is determined under paragraph
108 ~~[(b)(2)(C)]~~ (b) (2) (B) (iii) or paragraph ~~[(b)(4)]~~ (b) (2) (D), the affidavit or declaration
109 supporting the motion must state when and how the party came to know of the reason for
110 disqualification.

111 ~~[(e)]~~ **(b) (3) Reviewing judge.**

112 ~~[(e)(1)]~~ (b) (3) (A) The judge who is the subject of the motion must, without further
113 hearing or a response from another party, enter an order granting the motion or certifying the
114 motion and affidavit or declaration to a reviewing judge. The judge must take no further action
115 in the case until the motion is decided. If the judge grants the motion, the order will direct the
116 presiding judge of the court to assign another judge to the action or hearing. Assignment in
117 justice court cases will be in accordance with Utah Code of Judicial Administration Rule
118 9-109. The presiding judge of the court, any judge of the district, or any judge of a court of like

119 jurisdiction may serve as the reviewing judge.

120 ~~[(e)(2)]~~ (b) (3) (B) If the reviewing judge finds that the motion and affidavit or
121 declaration are timely filed, filed in good faith and legally sufficient, the reviewing judge shall
122 assign another judge to the action or hearing or request the presiding judge to do so.

123 Assignment in justice court cases will be in accordance with Utah Code of Judicial
124 Administration Rule 9-109.

125 ~~[(e)(3)]~~ (b) (3) (C) In determining issues of fact or of law, the reviewing judge may
126 consider any part of the record of the action and may request of the judge who is the subject of
127 the motion an affidavit or declaration responding to questions posed by the reviewing judge.

128 ~~[(e)(4)]~~ (b) (3) (D) The reviewing judge may deny a motion not filed in a timely
129 manner.