

**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: Michael K. McKell

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**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

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*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 a civil action pending in a court in a county with seven or more district  
33 court judges, each side may file a motion to disqualify one judge without cause, and if the  
34 motion is 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 may not file a motion for more than one disqualification  
39 of a judge without cause.

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

42 (a) (1) (E) Nothing in this paragraph (a) precludes the right of any party to file a motion  
43 to 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 of the first  
55 filing by the defendant or respondent with the court.

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 the filing of a motion under paragraph (a)(1), the judge assigned to the  
62 action must take no further action in the case.

63 (a) (3) (B) The action must be promptly reassigned to another judge within the county.

64 (a) (3) (C) If the action is unable to be reassigned to another judge within the county,  
65 the action may be transferred to a court in another county in accordance with Utah Code  
66 Section [78B-3-309](#).

67 **(a) (4) Exceptions.**

68 (a) (4) (A) Notwithstanding paragraphs (a)(1), (a)(2), and (a)(3), a party may not  
69 disqualify a judge without cause:

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

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

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

76 (a) (4) (A) (iv) if, under paragraph (a)(3)(C), an action is unable to be transferred to a  
77 court in another county in accordance with Utah Code Section [78B-3-309](#).

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

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

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

84 ~~[(b)(1)]~~ **(b) (2) (A)** A party to an action or the party's attorney may file a motion to  
85 disqualify a judge for cause. The motion must be accompanied by a certificate that the motion  
86 is filed in good faith and must be supported by an affidavit or unsworn declaration as described  
87 in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show

88 bias, prejudice or conflict of interest. The motion must also be accompanied by a request to  
89 submit for decision.

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

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

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

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

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

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

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

107 ~~[(c)]~~ **(b) (3) Reviewing judge.**

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

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

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

121 ~~(c)(3)~~ (b)(3)(C) In determining issues of fact or of law, the reviewing judge may  
122 consider any part of the record of the action and may request of the judge who is the subject of  
123 the motion an affidavit or declaration responding to questions posed by the reviewing judge.

124 ~~(c)(4)~~ (b)(3)(D) The reviewing judge may deny a motion not filed in a timely  
125 manner.