

SJR005S02 compared with SJR005S01

~~deleted text~~ shows text that was in SJR005S01 but was deleted in SJR005S02.

inserted text shows text that was not in SJR005S01 but was inserted into SJR005S02.

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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

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

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

Rule 63. Disability or disqualification of a judge.

(a) Disqualification of a judge without cause.

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

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

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

(a) (1) (C) In an action, a side ~~is~~ may not ~~entitled to~~ file a motion for more than one disqualification of a judge without cause.

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

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

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

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

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

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

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

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

(a) (2) (B) (ii) on the side of a defendant or respondent, before or at the time ~~fa responsive pleading to a complaint or petition is filed~~ of the first filing by the defendant or respondent with the court.

(a) (2) (C) A motion to disqualify a judge without cause must be accompanied by a request to submit for decision.

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

(a) (3) Assignment of action.

(a) (3) (A) Upon ~~the filing of~~ a motion under paragraph (a)(1), the judge assigned to the action must take no further action in the case.

(a) (3) (B) The ~~presiding judge~~ action must ~~be~~ promptly ~~reassign the action~~ reassigned to another judge ~~;~~

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

~~——~~ (a) (3) (D) If the presiding judge, or associate presiding judge, is unable to assign the action within the county.

(a) (3) (C) If the action is unable to be reassigned to another judge within the ~~court~~ county, the ~~judge~~ action may ~~transfer the case~~ be transferred to a court in another county in accordance with Utah Code Section 78B-3-309.

(a) (4) Exceptions.

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

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

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

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

(a) (4) (A) (iv) if, under paragraph (a)(3)(~~D~~), ~~the presiding judge, or associate presiding judge, is unable to transfer the case~~ C), **an action is unable to be transferred** to a court in another county in accordance with Utah Code Section 78B-3-309.

(b) Disability or disqualification for cause.

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

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

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

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

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

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

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

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

~~(b)(4)~~ **(b) (2) (D)** No party may file more than one motion to disqualify in an action, unless the second or subsequent motion is based on grounds that the party did not know of and

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could not have known of at the time of the earlier motion.

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

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

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

~~[(c)(2)]~~ (b) (3) (B) If the reviewing judge finds that the motion and affidavit or declaration are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge to do so. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109.

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

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