{deleted text} shows text that was in HJR008S01 but was deleted in HJR008S02.

inserted text shows text that was not in HJR008S01 but was inserted into HJR008S02.

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Representative Stephanie Gricius proposes the following substitute bill:

JOINT RESOLUTION AMENDING RULES OF CIVIL PROCEDURE ON

****EXAMPLE OF CHANGE OF CH**

2024 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate	Sponsor:		

LONG TITLE

General Description:

This joint resolution amends <u>Rule 63A of the Utah Rules of Civil Procedure {, Rule 63,}</u> regarding the <u>{disqualification} change</u> of <u>{ a }</u> judge <u>as a matter of right</u>.

Highlighted Provisions:

This joint resolution:

- amends <u>Rule 63A of</u> the Utah Rules of Civil Procedure {, Rule 63, on disqualifying a} to allow for a change of judge {without cause and for cause} by a party in civil action; and
- makes technical and conforming changes.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule (63) 63A, 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 \(\frac{63}{63A}\), Utah Rules of Civil Procedure is amended to read:

Rule \(\frac{63. \text{ Disability or disqualification of a judge.}}

(a) Disqualification of a judge without cause) 63A. Change of judge as a matter of right.

(a) Change of judge by one side of an action.

(a) (1) {Motion to disqualify without cause} Right to change a judge by one side of an action.

(a) (1) (A) In a civil action pending in a court in a county with seven or more district court judges, each side {may file a motion to disqualify one judge without cause.

(a) (1) (B) If the motion to disqualify a judge without cause is timely under paragraph (a)(2), the motion must be granted.

(a) (1) (C) is entitled to one change of judge as a matter of right under this paragraph

(a).

(a) (1) (B) Even if two or more parties on one side of a civil action have adverse or hostile interests, the 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) (D) In a civil action, a}changing judge under this paragraph (a).

(a) (1) (C) A side is not entitled to more than one {disqualification} change of { a} judge {without cause} under this paragraph (a).

(a) (1) ({E}D) Regardless of when a party joins a civil action, a party is not entitled to

a {motion to disqualify a judge without cause if the motion} change of judge as a matter of right under this paragraph (a) if the notice of a change of judge is untimely under paragraph (a)(2).

(a) ({1) (F) Nothing in}2) Notice of a change of judge.

(a) (2) (A) A party seeking a change of judge under this 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} must file a notice of a change of judge with the clerk of the court.

(a) (2) (B) If the notice of a change of judge is timely under this paragraph (a)(2), the notice must be granted.

(a) (2) (C) In filing a notice of a change of judge under this paragraph (a), a party is not required to state any reason for {disqualifying the} seeking a change of judge, but the party must attest in good faith that the {motion} notice is not being filed:

(a) (2) (A<u>C</u>) (i) for the purpose to delay any action or proceeding; or

(a) (2) ($\{A\}$ C) (ii) to $\{disqualify\}$ change the judge on the grounds of race, gender, or religious affiliation.

(a) (2) (\{\frac{B}{D}\}) The \{\frac{motion}{\notice}\} must be filed:

(a) (2) ({B}D) (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) (BD) (ii) on the side of a defendant or respondent, {before} within seven days after the day on which the defendant or respondent is served the complaint or petition, or at the time 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), whichever occurs first.

(a) (2) (E) Failure to file a timely {motion} notice of a change of judge under this rule precludes {the disqualification} a change of { a} judge under this paragraph (a).

(a) (3) Assignment of action.

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

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

(a) (3) (C) If the action is unable to be reassigned to another judge within the county, the action may be transferred to a court in another county in accordance with Rule 42.

(a) (4) Exceptions.

(a) (4) (A) Notwithstanding paragraphs (a)(1), (a)(2), and (a)(3), a party may not disqualify a judge without cause} A party, or a side, is not entitled to change a judge as a matter of right under this paragraph (a):

(a) (4) (A) {(i)} in any proceeding regarding a petition for post-conviction relief under Rule 65C;

(a) (4) (A) (ii) on a petition to modify child custody, child support, or alimony, 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 before the juvenile court or the Business and Chancery Court:

(a) (4) ({A}) (iv}D) in an action in which the judge is sitting as a water or tax judge;

(a) (4) ({A}) (v}E) in an action on remand from an appellate court; or

(a) (4) ({A}) (vi) if an action is unable to be transferred under paragraph (a)(3)(C) to another county in accordance with Rule 42.

{(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) [(a) Notice of change.] (b) Right to change a judge by agreement of the parties.

(b) (1) Notice of a change of judge.

(b) (1) (A) Except in actions with only one party, all parties joined in the action may, by unanimous agreement and without cause, change the 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} to the action by filing a notice of change of judge.

(b) (1) (B) The parties shall send a copy of the notice to the assigned judge and the presiding judge.

(b) (1) (C) The notice shall be signed by all parties and shall state: (1) the name of the assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in the action have agreed to the change; (4) that no other persons are expected to be named as parties; and (5) that a good faith effort has been made to serve all parties named in the pleadings.

(b) (1) (D) The notice shall not specify any reason for the change of judge.

(b) (1) (E) Under no circumstances shall more than one change of judge be allowed under this [rule] paragraph (b) in an action.

(b) (2) Time for filing a notice.

(b) (2) (A) Unless extended by the court upon a showing of good cause, the notice must be filed within 90 days 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 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 this 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} or prior to the notice of trial setting, whichever occurs first.

(b) (2) (B) Failure to file a timely notice precludes any change of judge under this [rule] paragraph (b).

[(c)] (b) (3) Assignment of action.

(b) (3) (A) Upon the filing of a notice of change, the assigned judge shall take no further action in the case { until the motion is decided. If the judge grants the motion, the order will direct}.

(b) (3) (B) The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action.

(b) (3) (C) If the presiding judge {of} is also 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 assigned judge, the clerk shall promptly send the notice to the associate presiding judge { of the court, any }, to another judge of the district, or to 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.}, who shall determine whether the notice is proper and, if so, shall reassign the action.

[(d)] (b) (4) Nondisclosure to court. No party shall communicate to the court, or cause another to communicate to the court, the fact of any party's seeking consent to a notice of

change.

[(e)] (c) Rule 63 unaffected. [This rule does not affect any rights under Rule 63.]

Nothing in this rule precludes the right of any party to seek disqualification of a judge under Rule 63.

Section 2. Effective date.

{As provided in}(1) In accordance with Utah Constitution, Article VIII, Section 4, the amendments in

this resolution {takes effect} pass upon approval by a two-thirds vote of all members elected to each house.

(2) After passage of this resolution under Subsection (1), the amendments in this resolution take effect on January 1, 2025.