I.C.R. 25. Disqualification of Judge.

Idaho Criminal Rule 25. Disqualification of Judge.

(a) Disqualification of judge without cause. In all criminal actions, except actions before drug courts or mental health courts, the parties shall each have the right to one disqualification without cause of the judge or magistrate, except as herein provided, under the following conditions and procedures:

(1) Motion to disqualify. In any criminal action in the district court or the magistrate's division thereof, excluding actions before drug courts or mental health courts, any party may disqualify one (1) judge or magistrate by filing a motion for disqualification without cause, which shall not require the stating of any grounds therefor, and the granting of such motion for disqualification without cause, if timely, shall be granted. Each party in a felony prosecution shall have one (1) disqualification without cause under this Rule as to the magistrate appointed to hear the preliminary hearing and another disqualification without cause as to the district judge appointed to hear the trial of the action.

(2) Time for filing. A motion for disqualification without cause must be filed not later than seven (7) days after service of a written notice setting the action for status conference, pre-trial conference, trial or for hearing on the first contested motion, or not later than fourteen (14) days after the service of a written notice specifying who the presiding judge or magistrate to the action will be, whichever occurs first; and such motion must be filed before the commencement of a status conference, a pre-trial conference, a contested proceeding or trial in the action.

(3) Multiple defendants. If there are multiple defendants the trial court shall determine whether such co-defendants have a sufficient interest in common in the action so as to be required to join in any disqualification without cause, or whether such parties have an adverse interest in the action such that each adverse co-defendant will have the right to file one (1) disqualification without cause.

(4) New judge. If at any time during the course of the proceedings, except under circumstances involving alternate judges or magistrates as set forth below in subparagraph (6), a new judge or magistrate is assigned to preside over the case, each party shall have the right to file a motion for one (1) disqualification without cause as to the new judge or magistrate within the time limits set forth in subparagraph (2) of this Rule. Provided, if a party has previously exercised a disqualification without cause under this Rule 25(a) such party shall have no right of disqualification without cause of a new judge or magistrate under this subparagraph.

(5) Disqualification on new trial. After a trial has been held, if a new trial has been ordered by the trial court or by an appellate court, any party may file a motion for disqualification without cause of the presiding judge or magistrate within the time limits set forth in subparagraph (2) of this Rule; provided, a remand of a case for sentencing or resentencing does not reinstate the right to one disqualification without cause under this subparagraph.

(6) Alternate judges. If the presiding judge intends to have a panel of judges as alternates to preside

at trial or at any other hearing or proceeding in the case, a notice or amended notice of trial setting shall include a list of judges who may alternatively be assigned to so preside if the presiding judge is unavailable. Upon service of the notice as to the panel, each party shall have the right to file one (1) motion for the disqualification without cause as to any alternate judge or magistrate not later than fourteen (14) days after service of written notice listing the alternate judge or magistrates. Provided, if a party has previously exercised the right to disqualification without cause under this Rule 25(a), that party shall have no right to disqualify an alternate judge or magistrate under this subparagraph.

(7) Service on judge. A party moving to disqualify a judge or magistrate under this Rule 25(a) shall mail a copy of the motion for disqualification to the presiding judge or magistrate at the judge's or magistrate's resident chambers.

(8) Hearings by new judge. If the presiding judge or magistrate is disqualified under this Rule and the newly appointed judge or magistrate resides in a county other than the county where the action is filed, then all hearings on motions and evidentiary hearings, except the primary trial of the action, can be heard by the newly appointed judge or magistrate in another county within the judicial district, at the discretion of the new presiding judge or magistrate.

(9) Exceptions. Notwithstanding the above provisions, the right to one (1) disqualification without cause shall not apply to:

(i) A judge when acting in an appellate capacity, unless the appeal is a trial de novo;

(ii) A judge or magistrate in a post-conviction proceeding, when that proceeding has been assigned to the judge or magistrate who entered the judgment of conviction or sentence being challenged by the post-conviction proceeding;

(iii) A judge or magistrate who has been appointed by the Supreme Court to preside over a specific criminal action.

(10) Speedy trial. If a defendant disqualifies a judge or magistrate under this Rule, the time within which that defendant must be given a speedy trial or trial pursuant to I.C. ß 19-3501 shall commence to run anew on the date of such disqualification.

(11) Matters that may be heard by a disqualified judge. A judge who has been disqualified without cause in a case may preside over an initial appearance or arraignment in that case, and may also, when the parties and the disqualified judge have so agreed in writing or on the record, preside over any other hearing and decide any other issue in the case.

(12) Misuse of disqualification without cause. A motion for disqualificationwithout cause shall not be made under this Rule to hinder, delay or obstruct the administration of justice. If it appears that an

attorney, law firm, prosecuting attorney's officer or public defender's office is using disqualifications without cause for such purposes, or with such frequencyas to impede the administration of justice, the Trial Court Administrator shall notify the Administrative Director of the Courts requesting a reviewof the possible misuse of disqualifications without cause. The Administrative Director shall review the possible misuse of this Rule and may take remedial measures. The Administrative Director, before or after taking such remedial measures, may refer the matter to the Chief Justice, who, upon determining that there has been misuse of disqualifications withoutcause, may take appropriate action to address the misuse, which may includean order providing that the attorney, firm, prosecuting attorney's office or public defender's office that has engaged in such misuse is prohibited from using disqualifications without cause for such period of time as is set forth in the order or until further order of the Chief Justice.

(b) Disqualification for cause. Any party to an action may disqualify a judge or magistrate from presiding in any action upon any of the following grounds:

(1) That the judge or magistrate is a party, or is interested, in the action or proceeding.

(2) That judge or magistrate is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law.

(3) That judge or magistrate has been attorney or counsel for any party in the action or proceeding.

(4) That judge or magistrate is biased or prejudiced for or against any party or that party's case in the action.

(c) Motion for disqualification. Any such disqualification for cause shall be made by a motion to disqualify accompanied by an affidavit of the party or that party's attorney stating distinctly the grounds upon which disqualification is based and the facts relied upon in support of the motion. Such motion for disqualification for cause may be made at any time. The presiding judge or magistrate sought to be disqualified shall grant or deny the motion for disqualification upon notice and hearing in the manner prescribed by these rules for motions.

(d) Voluntary disqualification. This rule shall not prevent anypresiding judge in an action from voluntarily disqualifying himself or herself without stating any reason therefore.

(e) Disqualification and assignment of new judge. Upon the filing of a motion for disqualification, the presiding judge shall be without authority to act further in such action except to grant or deny such motion for disqualification or to act as provided in subparagraph (a)(11) of this Rule. Upon disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, shall appoint any other qualified judge in the judicial district to act or preside in the action. In lieu of such direct appointment procedure, the administrative district judge, or designee, may make application to the Supreme Court for appointment of a new judge from outside of the judicial district to act or preside in the action.

(Adopted March 24, 1982, effective July 1, 1982; amended March 23, 1983, effective July 1, 1983; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 23, 1990, effective July 1, 1990; amended April 19, 1995; amended August 24, 1995; amended November 1, 1995; amended November 22, 1995; amended January 24, 1997, effective February 1, 1997, repeals former Rule 25(a) - disqualification of a judge without cause; amended April 22, 2004, effective July 1, 2004; amended June 21, 2004, effective July 1, 2004; amended November 20, 2006, effective January 1, 2007; amended August 28, 2008, effective August 28, 2008; amended on July 23 2010, effective July 23, 2010; amended December 27, 2010, effective January 1, 2011; amended June 3, 2011, effective July 1, 2011; amended February 9, 2012, effective July 1, 2012.)

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