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

Idaho Criminal Rule 25. Disqualification of Judge

(a) Disqualification of Judge Without Cause. In all felony and misdemeanor criminal actions, except actions before drug courts or mental health courts, the parties each have the right to one disqualification without cause of the judge, except as provided in this rule, under the following conditions and procedures:

(1) *Motion to Disqualify.* In any felony or misdemeanor criminal action, excluding actions before drug courts or mental health courts, any party may disqualify one judge by filing a motion for disqualification without stating any grounds, and the motion must be granted if timely filed. Each party in a felony prosecution will have one disqualification without cause of the magistrate appointed to hear the preliminary hearing and another disqualification without cause of the district judge appointed to hear the trial of the action.

(2) *Time for Filing.* A motion for disqualification without cause must be filed within seven 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 within 14 days after the service of a written notice specifying who the presiding judge or magistrate to the action will be, whichever occurs first. The 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 must determine whether the 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 they have an adverse interest in the action such that each adverse co-defendant will have the right to file one disqualification without cause.

(4) *New Judge.* If a new judge or magistrate is assigned to preside over the case, except under circumstances involving alternate judges as set forth in subsection (6) below, each party will have the right to file a motion for one disqualification without cause of the new judge or magistrate within the time limits set in subparagraph (2) above. However, if a party has previously exercised a disqualification without cause, that party has no right of disqualification without cause of a new judge 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 within the time limits set forth in subparagraph (2) of this Rule. A party does not have a



right to disqualification without cause if a case is remanded only for sentencing or resentencing.

(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 must include a list of judges who may alternatively be assigned to preside if the presiding judge is unavailable. On service of the notice as to the panel, each party has the right to file one motion for disqualification without cause of any alternate judge within 14 days after service of written notice listing the alternate judges. If a party has previously exercised the right to disqualification without cause, that party has no right to disqualify an alternate judge under this subparagraph.

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

(8) *Hearings by New Judge.* If the presiding judge is disqualified without cause and the newly appointed judge 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, may be heard by the newly appointed judge in another county within the judicial district, at the discretion of the new presiding judge.

(9) *Exceptions.* The right to one disqualification without cause does not apply to:

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

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

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

(10) *Speedy Trial.* If a defendant disqualifies a judge without cause, the time within which that defendant must be given a speedy trial or trial pursuant to Idaho Code § 19-3501 begins to run anew on the date of the 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. When the parties and the disqualified judge have agreed in writing or on the record, the disqualified judge may preside over any other hearing and decide any other issue in the case.



(12) *Misuse of Disqualification Without Cause.* A motion for disqualification without cause must not be made to hinder, delay or obstruct the administration of justice. If it appears that an attorney, law firm, prosecuting attorney's office or public defender's office is using disqualifications without cause:

(A) with intent to hinder, delay or obstruct the administration of justice or

(B) with such frequency as to impede the administration of justice, the Trial Court Administrator must notify the Administrative Director of the Courts and request a review of the possible misuse of disqualifications without cause. The Administrative Director must review the possible misuse of this Rule and may take remedial measures. The Administrative Director, before or after taking remedial measures, may refer the matter to the Chief Justice, who, on determining that there has been misuse of disqualifications without cause, may take appropriate action to address the misuse. Appropriate action may include an order providing that the attorney, firm, prosecuting attorney's office or public defender's office that has engaged in misuse is prohibited from using disqualifications without cause for such period of time as is set in the order or until further order of the Chief Justice.

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

(1) that the judge is a party, or is interested, in the action or proceeding;

(2) that the judge is related to either party by consanguinity or affinity within the third degree;

(3) that the judge has been attorney or counsel for any party in the action or proceeding; or

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

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

(d) Voluntary Disqualification. This Rule does not prevent any presiding judge in an action from voluntarily disqualifying himself or herself without stating any reason.



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(e) Disqualification and Assignment of New Judge. On the filing of a motion for disqualification, the presiding judge has no authority to act further in the action except to grant or deny the motion for disqualification or to act as provided in subsection (a)(11). On disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, must appoint any other qualified judge in the judicial district to act or preside in the action. Instead of direct appointment, 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 February 22, 2017, effective July 1, 2017; Amended and effective April 21, 2020.)

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