IRFLP 107 Disqualification of Judge Without Cause

Idaho Rules of Family Law Procedure Rule 107. Disqualification of Judge Without Cause.

In all civil actions, the parties shall each have the right to one (1) disqualification of the judge without cause, except as herein provided, under the following conditions and procedures:

A. Motion to disqualify. In any action in the district court or the magistrate's division thereof, any party may disqualify one (1) judge by filing a motion for disqualification, which shall not require the stating of any grounds therefor, and such motion for disqualification, if timely, shall be granted.

B. Time for filing. A motion for disqualification without cause must be filed not later than seven (7) days after service of a written notice or order setting the action for status conference, pretrial conference, trial or for hearing on the first contested motion, or not later than twenty-one (21) days after service or receipt of a complaint, summons, order or other pleading indicating or specifying who the presiding judge to the action will be, whichever occurs first; and such motion must be filed before the commencement of a status conference, a pretrial conference, a contested proceeding or trial before the judge sought to be disqualified.

C. Multiple parties. If there are multiple parties plaintiff, defendant or otherwise, the trial court shall determine whether such co-parties have sufficient interest in common in the action so as to be required to join in a disqualification without cause, or whether such parties have an adverse interest in the action such that each adverse co-party is entitled to file one (1) motion for disqualification without cause.

D. New parties. If a new party is joined in an action after the time for disqualification without cause of the presiding judge has passed, the new party shall have the right to file a motion for disqualification without cause within fourteen (14) days of the filing date of that party's first appearance or from the date when that party's first responsive pleading is due, whichever occurs first.

E. New judge. If at any time during the course of the proceedings, except under circumstances involving alternate judges as set forth below in subparagraph G, a new judge is assigned to preside over the case, each party shall have the right to file one (1) motion for disqualification without cause as to the new judge, within the time limits set forth in subparagraph B of this Rule. Provided, if a party has previously exercised a disqualification under this Rule 107, that party shall have no right of disqualification without cause of a new judge under this subparagraph.

F. 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, each party may file a motion for disqualification without cause of the presiding judge, within the time limits set forth in subparagraph B of this Rule.

G. 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 disqualification without cause as to any alternate judge not later than ten (10) days after service of written notice listing the alternate judges. Provided, if a party has previously exercised the right to disqualification without cause under this Rule, that party shall have no right to disqualify an alternate judge under this subparagraph.

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

I. Exceptions. Notwithstanding the above provisions, the right to disqualification without cause shall not apply to:

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

2. A judge who has been appointed by the Supreme Court to preside over a specific civil action.

3. A judge hearing petitions to modify child custody orders or child support orders entered by that same judge in an earlier proceeding.

J. Misuse of disqualification without cause. A Motion for disqualification without cause shall not be made under this Rule to hinder, delay or obstruct the administration of justice. If it appears that an attorney or law firm is using disqualifications without cause for such purposes, or with such frequency as to impede the administration of justice, the Trial Court Administrator shall notify the Administrative Director of the Courts requesting a review of 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 without cause, may take appropriate action to address the misuse, which may include an order providing that the attorney or firm 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.

*Pilot Project for Fourth Judicial District
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