



I.R.C.P. 40. Disqualification

Idaho Rules of Civil Procedure Rule 40. Disqualification.

(a) Disqualification Without Cause. In all civil actions and petitions for judicial review, each party has the right to file one motion for disqualification of the judge, which does not require the statement of any grounds, under the following conditions and procedures:

(1) *Time for Filing.* The motion must be filed not later than 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 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. The motion must also be filed before the judge sought to be disqualified has presided over a status conference, a pretrial conference, a contested proceeding or trial.

(2) *Multiple Parties.* If there are multiple co-parties, the trial court must determine whether the co-parties have sufficient interest in common so as to be required to join in a disqualification without cause, or whether they have an adverse interest such that each co-party is entitled to file one motion for disqualification without cause.

(3) *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 may file a motion for disqualification without cause within 14 days after that party's first appearance or 14 days after that party's first responsive pleading is due, whichever occurs first.

(4) *New Judge.* If at any time during the course of the proceedings, except under circumstances involving alternate judges as set forth below in subparagraph (6), a new judge is assigned to preside over the case, each party may file one motion for disqualification without cause of the new judge, within the time limits in subparagraph (1) of this Rule. Provided, if a party has previously exercised a disqualification under this Rule 40(a), 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 is 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 (1) of this Rule.

(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 so preside if the presiding judge is unavailable. Upon service of the notice as to the panel, each party may file one motion for disqualification without cause as to any alternate judge not later than 14 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 40(a), 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 40(a) must mail a copy of the motion for disqualification to the presiding judge at the judge's resident chambers.

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

(A) a judge when acting in an appellate capacity, from another court 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 civil action.

(9) *Misuse of Disqualification Without Cause.* A motion for disqualification without cause must 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 must notify the Administrative Director of the Courts requesting a review of the possible misuse of disqualifications without cause. The Administrative Director will 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.

(b) Disqualification for Cause.

(1) *Grounds.* A party to an action may disqualify a judge for cause upon any of the following grounds:

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

(B) the judge is related to a party by consanguinity or affinity within the third degree, computed according to the rules of law;



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

(D) the judge is biased or prejudiced for or against any party or the subject matter of the action.

(2) *Motion for Disqualification.* A motion to disqualify for cause must be accompanied by an affidavit of the party or the party's attorney stating the specific grounds upon which disqualification is based and the facts relied upon 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 upon notice and hearing in the same manner as other motions.

(c) Voluntary Disqualification. A presiding judge in an action may make a voluntary disqualification without stating any reason therefore.

(d) Disqualification and Assignment of New Judge. Upon the filing of a motion for disqualification, the presiding judge must not act further in the action except to grant or deny the motion for disqualification. Upon disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, must appoint another qualified judge in the judicial district, or apply to the Supreme Court for appointment of a new judge from outside of the judicial district.

(Source: <https://isc.idaho.gov/rule40-new>
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