

Rule 63. Disability or Disqualification of Judge; Notice to Remove; Assignment of a Judge**63.01 Disability of Judge**

If by reason of death, sickness, or other disability a judge before whom an action has been tried is unable to perform judicial duties after a verdict is returned or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial or for any other reason, that judge may exercise discretion to grant a new trial.

63.02 Interest or Bias

No judge shall sit in any case if disqualified under the Code of Judicial Conduct. If there is no other judge of the district who is qualified, or if there is only one judge of the district, such judge shall forthwith notify the Chief Justice of the Minnesota Supreme Court of that judge's disqualification.

(Amended effective July 1, 2018.)

63.03 Notice to Remove

Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove. The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.

No such notice may be filed by a party or party's attorney against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice, or who is assigned by the Chief Justice of the Minnesota Supreme Court. A judge or judicial officer who has presided at a motion or other proceeding or who is assigned by the Chief Justice of the Minnesota Supreme Court may not be removed except upon an affirmative showing that the judge or judicial officer is disqualified under the Code of Judicial Conduct.

After a party has once disqualified a presiding judge or judicial officer as a matter of right, that party may disqualify the substitute judge or judicial officer, but only by making an affirmative showing that the judge or judicial officer is disqualified under the Code of Judicial Conduct.

Upon the filing of a notice to remove or if a litigant makes an affirmative showing that a substitute judge or judicial officer is disqualified under the Code of Judicial Conduct, the chief judge of the judicial district shall assign any other judge of any court within the district, or a judicial officer in the case of a substitute judicial officer, to hear the cause.

(Amended effective January 1, 1992; amended effective March 1, 2001; amended effective July 1, 2018.)

Task Force Comment - 1991 Adoption

This amendment to Minn. R. Civ. P. 63.03 is intended to provide a uniform mechanism for removing any judicial officer, whether a judge or referee. This rule would replace various inconsistent provisions of the existing rules. 4th Dist. R. 16.01 requires objections to any referee to be filed one court day before the hearing. 2d Dist. R. 23 requires objection within 10 days after notice of assignment and not later than commencement, consistent with the statute and rule governing judges.

Advisory Committee Comment - 2000 Amendment

Rule 63.03 is amended to make clear the fact that a judge specially assigned by the Chief Justice to hear cases originally pending in more than one district cannot be removed by mere filing of a notice to remove. This amendment is a companion to the amendment of Rule 113.03 of the Minnesota General Rules of Practice in 2000, effective March 1, 2001, to provide a formal mechanism for requesting the Chief Justice to make such an assignment. This rule codifies the existing practice in special cases such as special assignment of a judge by the Chief Justice. The rule makes it clear that even a judge assigned by the Chief Justice may be removed for cause.

63.04 Assignment of Judge

Upon receiving notice as provided in Rules 63.02 and 63.03, the chief justice shall assign a judge of another district, accepting such assignment, to preside at the trial or hearing, and the trial or hearing shall be postponed until the judge so assigned can be present.

Advisory Committee Comment - 2018 Amendments

*Rule 63 is amended to apply the disqualification standard of the Minnesota Code of Judicial Conduct to disqualification under the civil rules. The standard in the existing rule - whether the judicial officer would be excused from service as a juror and tying that determination to an affirmative showing of prejudice - does not accurately state the correct standard. Rule 26.03, subd. 14(3) of the Minnesota Rules of Criminal Procedure uses the Code of Judicial Conduct standard, and the Minnesota Supreme Court has applied the Code of Judicial Conduct for deciding questions of disqualification of judges on the Minnesota Court of Appeals. See *Powell v. Anderson*, 660 N.W.2d 107, 114-15 (Minn. 2003). The juror-based standard dates back to Minnesota's Territorial days. See *Minnesota Revised Statutes 1851*, chapter 69, article 2, section 5. The standard has not been modified in the civil rules since, including upon the adoption of the Code of Judicial Conduct by the Minnesota Supreme Court in 1974.*

This amended rule adopts a standard for disqualification or recusal of a judge that is clearer and readily accessible to judges and litigants. Although close questions of disqualification may properly be resolved in favor of disqualification, the Code of Judicial Conduct also recognizes that a judicial officer has an affirmative duty to hear matters properly assigned where disqualification is not required by the Code. See Rule 2.7 of the Code of Judicial Conduct.