

Rule 106. Hearing on Motion to Remove Judge for Actual Prejudice or Bias

All motions for removal of a judge, referee, or judicial officer, on the basis of actual prejudice or bias shall be heard in the first instance by the judge sought to be removed. If that judge denies the motion, it may subsequently be heard and reconsidered by the Chief Judge of the district or another judge designated by the Chief Judge upon a motion filed and served within 7 days of the judge's order.

(Amended effective July 1, 2019.)

Task Force Comment - 1991 Adoption

Minn.R.Civ.P. 63.02 does not currently specify the procedure to be followed when a motion is made to remove a judge from hearing a case on the grounds of actual bias or prejudice. This rule requires the motion to be heard initially by the judge sought to be removed, and allows the chief judge of the district to reconsider the motion if it is denied by the affected trial judge. The rule does not require the party seeking removal to bring the motion for reconsideration before the chief judge; it merely permits that reconsideration. Bringing the motion for reconsideration should not be construed as any condition precedent to appellate review, whether by appeal or extraordinary writ.

The rule intentionally allows a motion for reconsideration only if the trial court denies the motion for removal. If the motion is granted, it should only be addressed further on appeal.

The procedure for review by the chief judge of the district is not entirely satisfactory. Consideration should be given to facilitating appeal of these issues to the appellate courts, but the Task Force did not directly address this question because of the current limited jurisdiction of the appellate courts to hear appeals of decisions by judges declining to recuse themselves.

Advisory Committee Comment - 2019 Amendment

Rule 106 is amended in 2019 to establish a deadline for seeking review by the Chief Judge (or designee) of a judge's decision denying a motion for removal of a judge for cause. The absence of a deadline hinders efficient case processing and the importance of the recusal or disqualification issue merits prompt resolution.