

542.16 NOTICE TO REMOVE.

Subdivision 1. **Initial disqualification.** Any party, or the party's attorney, to a cause pending in a district court, except for a proceeding under section 484.702, may make and file with the court administrator in which the action is pending and serve on the opposite party a notice to remove. The notice must 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, or, if no notice of a hearing is served with the summons, then within the time to answer the summons, whichever is later. Thereupon without any further act or proof, the chief judge of the judicial district shall assign any other judge of any court within the district to preside at the trial of the cause or the hearing of the motion or order to show cause, and the cause shall be continued on the calendar, until the assigned judge can be present. In criminal actions the notice to remove shall be made and filed with the court administrator by the defendant, or the defendant's attorney, not less than two days before the expiration of the time allowed by law to prepare for trial and in any of those cases the presiding judge shall be incapacitated to try the cause. In criminal cases, the chief judge, for the purpose of securing a speedy trial, may change the place of trial to another county.

Subd. 2. **Subsequent disqualifications.** After having once disqualified a presiding judge as a matter of right under subdivision 1, a litigant may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. If a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the cause.

History: (9221) *RL s 4101; 1919 c 92 s 1; 1927 c 283; 1931 c 200; 1937 c 237 s 1; 1978 c 647 s 2; 1979 c 233 s 18; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2000 c 372 s 1*