

Judicial Disqualification Resource Center

Recusal and Disqualification of Judges and Other Adjudicators



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Judicial Disqualification in Illinois

For more than a century Illinois law has zealously guarded the constitutional right of a criminal defendant to a fair trial by providing him with the right to substitute a replacement for any judge he believes to be biased.

The current incarnation of this provision, which is found at §114-5(a) of the Illinois Code of Criminal Procedure, vests criminal defendants with the “absolute right” to

remove an assigned trial judge upon filing a timely written motion containing a good faith allegation of judicial bias. [Section 114-5\(c\)](#) likewise allows the State to make a peremptory challenge.

In Illinois civil proceedings, peremptory challenges are governed by [§5/2-1001\(a\)\(2\)](#) of the Illinois Code of Civil Procedure. Pursuant to that provision, a party to a civil case has an absolute right to a substitution of one judge without cause, as a matter of right, as long as it acts in a timely manner; that is, before the judge has ruled on a substantial issue in the case.

Even in the absence of any substantive ruling, a motion for substitution may be denied if the movant had an opportunity to “test the waters” and form an opinion as to the judge’s reaction to her claim. Therefore, a petition for substitution of judge should be brought at the earliest practical time after discovery of the facts



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upon which the petition is based.

Also, while a party is entitled to file only one change of judge motion in any Illinois civil case, each individual defendant in a multi-defendant action is deemed to be a separate party who has an independent right to one substitution of judge – even when defendants are represented by the same counsel.

Illinois permits a party to peremptorily disqualify an assigned judge, as long as it does so in a timely manner. Because this is so, judicial disqualification in Illinois is commonly sought pursuant to the state’s peremptory judicial disqualification provisions. See Chapter 27 (Flamm, R., [Judicial Disqualification: Recusal and Disqualification of Judges \(Second Edition, 2007\)](#)). But in Illinois, as elsewhere, parties also have the right to seek substitution of a judge for cause in both civil and criminal proceedings. When they invoke that right in a procedurally proper fashion, they are entitled to have the matter decided by a judge other than the one whose capacity to sit has been challenged. To be entitled to a hearing before another judge, however, the motion must allege grounds that, if true, would justify granting a substitution.

In Illinois, disqualification for cause is occasionally sought pursuant to the Illinois Code of Judicial Conduct – the terms of which are generally considered to be mandatory. Supreme Court Rule [63\(C\)\(1\)](#), which is also known as [Canon 3](#) of the Illinois Code of Judicial Conduct, specifically requires a trial judge to disqualify himself whenever his impartiality may be reasonably questioned due to his personal bias in favor of one of the parties.

References:

1. For a December 2011 Illinois Bar Journal article discussing substitution of a judge for cause [click here](#)
2. To review a Special Committee of the Illinois State Bar Association’s recent (2013) “Report and Recommendations on Judicial Disqualification Standards” [click here](#)
3. For an analysis of recusal and disqualification law in Illinois which is updated annually see Flamm, R., [Judicial Disqualification: Recusal and Disqualification of Judges \(Second Edition, 2007\)](#) Also see this recent (Dec. 2012) [policy brief](#) by the Chicago Appleseed Fund for Justice, which cites [Judicial Disqualification](#). To locate Illinois libraries that have the current edition of this book [click here](#)

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