

1       **Rule 63. Disability or disqualification of a judge.**

2       **(a) Substitute judge; Prior testimony.** If the judge to whom an action has been assigned is unable  
3 to perform his or her duties, then any other judge of that district or any judge assigned pursuant to  
4 Judicial Council rule is authorized to perform those duties. The judge to whom the case is reassigned  
5 may rehear the evidence or some part of it.

6       **(b) Motion to disqualify; affidavit or declaration.**

7       (b)(1) A party to an action or the party's attorney may file a motion to disqualify a judge. The  
8 motion must be accompanied by a certificate that the motion is filed in good faith and must be  
9 supported by an affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform  
10 Unsworn Declarations Act~~declaration under penalty of Utah Code Section 78B-5-705~~ stating facts  
11 sufficient to show bias, prejudice or conflict of interest. The motion must also be accompanied by a  
12 request to submit for decision.

13       (b)(2) The motion must be filed after commencement of the action, but not later than 21 days after  
14 the last of the following:

15           (b)(2)(A) assignment of the action or hearing to the judge;

16           (b)(2)(B) appearance of the party or the party's attorney; or

17           (b)(2)(C) the date on which the moving party knew or should have known of the grounds  
18 upon which the motion is based.

19 If the last event occurs fewer than 21 days before a hearing, the motion must be filed as soon as  
20 practicable.

21       (b)(3) Signing the motion or affidavit or declaration constitutes a certificate under Rule 11 and  
22 subjects the party or attorney to the procedures and sanctions of Rule 11.

23       (b)(4) No party may file more than one motion to disqualify in an action, unless the second or  
24 subsequent motion is based on grounds that the party did not know of and could not have known of at  
25 the time of the earlier motion.

26       (b)(5) If timeliness of the motion is determined under paragraph (b)(2)(C) or paragraph (b)(4), the  
27 affidavit or declaration supporting the motion must state when and how the party came to know of the  
28 reason for disqualification.

29       **(c) Reviewing judge.**

30       (c)(1) The judge who is the subject of the motion must, without further hearing or a response from  
31 another party, enter an order granting the motion or certifying the motion and affidavit or declaration  
32 to a reviewing judge. The judge must take no further action in the case until the motion is decided. If  
33 the judge grants the motion, the order will direct the presiding judge of the court to assign another  
34 judge to the action or hearing. Assignment in justice court cases will be in accordance with Utah Code  
35 of Judicial Administration Rule 9-109. The presiding judge of the court, any judge of the district, or any  
36 judge of a court of like jurisdiction may serve as the reviewing judge.

37       (c)(2) If the reviewing judge finds that the motion and affidavit or declaration are timely filed, filed  
38 in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or

39 hearing or request the presiding judge to do so. Assignment in justice court cases will be in  
40 accordance with Utah Code of Judicial Administration Rule 9-109.

41 (c)(3) In determining issues of fact or of law, the reviewing judge may consider any part of the  
42 record of the action and may request of the judge who is the subject of the motion an affidavit or  
43 declaration responding to questions posed by the reviewing judge.

44 (c)(4) The reviewing judge may deny a motion not filed in a timely manner.

45

46