



Removal of a Judge

This technical assistance packet includes information on Minnesota court rules regarding removing a judge in criminal, civil and juvenile matters. In most cases, each party has the right to remove a judge, for any or no reason, before the proceedings start. Parties can also remove a judge if they can show good cause, such as bias or an interest in the case. The following information will assist advocates in understanding the various court rules that apply to removing judges. If you have any further questions or need a copy of any rule, please feel free to contact the Battered Women's Legal Advocacy Project.

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Attached: Please follow the links provided to access a copy of the form used to provide notice of removal.

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Removal of a Judge

Each party has the right to remove a judge from their particular case in a variety of ways. The determination of whether, when, and how a judge should be removed depends on the type of case the judge is presiding over.

Criminal Proceedings

In a criminal proceeding, the defendant or the prosecuting attorney may serve a notice to remove the judge assigned to the trial or hearing as a matter of right without cause. Each party has an opportunity to file one motion to remove a judge without showing cause for such a removal.

The notice must be:

- Served on the other party and filed with the court administrator (<http://www.mncourts.gov/default.aspx?page=513&item=468&itemType=formDetails>)
- Within seven days after the party receives notice of which judge is to preside at the trial or hearing, but no later than the commencement of the trial or hearing

The notice is not effective if the judge has already presided at the trial or hearing except upon an affirmative showing, on the part of the judge, of good cause for removal. After a party has already disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause. Minn. R. Crim. P. § 26.03, subd. 13 (4).

Juvenile Delinquent Proceedings

In juvenile criminal proceedings, the child's counsel or the prosecuting attorney may serve a notice to remove the judge assigned to the trial or hearing as a matter of right without cause. Each party has an opportunity to file one motion to remove a judge without showing cause for such a removal.

The notice must be:

- Served on the other party and filed with the court administrator (<http://www.mncourts.gov/default.aspx?page=513&item=468&itemType=formDetails>)
- Within seven days after the party receives notice of which judge is to preside at the trial or hearing, but no later than the commencement of the trial or hearing

No notice shall be effective against a judge who has already presided at hearing of which the party had notice, except where a party shows cause as to why a judge should be removed. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause. Minn. R. Juv. Del. P. § 22.03.

All Other Proceedings

In all other proceedings, any party or attorney may make a notice to remove a judge as a matter of right without cause. Each party has an opportunity to file one motion to remove a judge without showing cause for such a removal.

When a Judge is Removable

1. If, after a matter has been tried, the judge is unable to perform judicial duties due to death, sickness, or another disability, any other judge may perform those duties. However, if the new judge believes that the duties cannot be performed because that judge did not preside at the trial, that judge may exercise discretion to grant a new trial. Minn. R. Civ. P. § 63.01; Minn. R. Juv. Prot. P. § 7.07, subd. 1.
2. A judge is removable if he or she has affirmatively shown a bias or interest in the matter. Minn. R. Civ. P. § 63.02; Minn. R. Juv. Prot. P. § 7.07, subd. 2.

How to Remove a Judge

1. Notice to remove must be served upon the opposing party and filed with the court administrator
(<http://www.mncourts.gov/default.aspx?page=513&item=468&itemType=formDetails>)
2. This notice must be filed within ten days after the party receives notice of which judge is to preside at the trial or hearing, but not later than the commencement of the trial or hearing

The notice is not effective if the judge has already presided at the proceeding of which the party had notice or if the judge has been assigned by the Chief Justice of the Minnesota Supreme Court. If the judge has already presided at the proceeding or has been assigned by the Chief Justice of the Minnesota Supreme Court, the judge can be removed only upon an affirmative showing of prejudice on the part of the judge.

After a party has once disqualified a presiding judge or judicial officer as a matter of right, that party may disqualify the substitute judge only by making an affirmative showing of prejudice. Motions for removal of a judge on the basis of actual prejudice are heard by the judge sought to be removed. If that judge denies the motion, it may subsequently be heard and reconsidered by another judge.

Upon the filing of a notice to remove or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge shall assign another judge to hear the case. Minn. R. Civ. P. § 63.03; Minn. Gen. R. Prac. § 106; Minn. R. Juv. Prot. P. § 7.07, subd. 3.

Termination of Parental Rights Matters and Permanent Placement Matters

When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. Thus, the judge assigned to the protection matter cannot be removed by the parties as a matter of right. The parties must show cause for removal in prejudice. Minn. R. Juv. Prot. P. § 7.07, subd. 4.