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## Civil Procedure; Procedures for Disqualification of Judges

Univeristy of the Pacific, McGeorge School of Law

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# Civil Procedure

## Civil Procedure; procedures for disqualification of judges

N.R.S. §1.240 (repealed), §1.235 (amended).  
SB 250 (Committee on Judiciary); STATS 1981, Ch 152

Existing law provides that a party seeking to disqualify any judge, other than a justice of the supreme court,<sup>1</sup> for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought.<sup>2</sup> Chapter 152 revises certain time requirements for the filing of this affidavit.<sup>3</sup> Generally, the affidavit must be filed at least twenty days before the date set for trial or hearing of the case<sup>4</sup> or at least three days before the date set for the hearing of any pretrial matter.<sup>5</sup> If a judge has not been assigned to a case before these filing dates, however, Chapter 152 allows a party to file the affidavit (1) before the empaneling of the jury, the taking of evidence, or the making of any ruling in the trial or hearing,<sup>6</sup> (2) before the hearing of any pretrial matter,<sup>7</sup> or (3) within ten days after the party or his or her attorney is notified of an assignment to a judge,<sup>8</sup> whichever occurs first.<sup>9</sup> Prior to the enactment of Chapter 152 the third alternative specified that the affidavit be filed within three days after notification of the assignment of the case to a judge.<sup>10</sup> Chapter 152 also provides that if a case is reassigned to a new judge and each of the above-mentioned time periods for filing the affidavit has passed, the parties have ten days after notice of the reassignment to file the affidavit.<sup>11</sup> If the ten-day period expires after the date set for trial or hearing of the case, the case must be rescheduled for a date after the expiration of the ten-day period, unless the parties agree to an earlier date.<sup>12</sup> Chapter 152 also repeals certain provisions relating to the disqualification of judges.<sup>13</sup> First,

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1. See also N.R.S. §1.225 (procedure for the disqualification of supreme court justices).
  2. *Id.* §1.235 1. See generally *id.* §1.230 (grounds for disqualification).
  3. Compare *id.* §1.235 2 with STATUTES OF NEVADA 1979, c. 278, §1, at 393.
  4. N.R.S. §1.235 1(a).
  5. *Id.* §1.235 1(b).
  6. *Id.* §1.235 2(c).
  7. *Id.* §1.235 2(b).
  8. *Id.* §1.235 2(a).
  9. *Id.* §1.235 2.
  10. See STATUTES OF NEVADA 1979, c. 278, §1, at 393 (amending N.R.S. §1.235).
  11. N.R.S. §1.235 3.
  12. *Id.*
  13. See STATUTES OF NEVADA 1981, c. 152, §2, at — (repealing N.R.S. §1.240).

statutory law providing that the procedural rules for the disqualification of judges were not applicable in juvenile court proceedings has been eliminated.<sup>14</sup> Furthermore, prior to the enactment of Chapter 152 there could be no more than one change of judge under the disqualification procedures.<sup>15</sup> This provision has been removed<sup>16</sup> thus apparently allowing a party the opportunity to challenge the impartiality of any number of judges assigned to a case.<sup>17</sup> Prior law also specifically provided that the right of a party to seek the disqualification of a judge could be expressly or impliedly waived.<sup>18</sup> Chapter 152 repeals this waiver provision. The Supreme Court of Nevada, however, has indicated that failure to comply with the filing requirements for the disqualification of judges is an implied waiver.<sup>19</sup> Finally, Chapter 152 eliminates the twenty-five dollar fee formerly required for the filing of the affidavit for disqualification.<sup>20</sup>

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14. Compare *id.* with STATUTES OF NEVADA 1979, c. 42, §2, at 60. See generally STATUTES OF NEVADA 1975, c. 415, §1, at 609 (amending N.R.S. §1.230). See also *A Minor v. State*, 86 Nev. 691, 694, 476 P.2d 11, 13 (1970) (procedures established for the disqualification of judges were applicable in juvenile court proceedings).

15. See STATUTES OF NEVADA 1979, c. 42, §2, at 60 (amending N.R.S. §1.240 2).

16. See STATUTES OF NEVADA 1981, c. 152, §2, at — (repealing N.R.S. §1.240).

17. Compare N.R.S. §1.235 3 with STATUTES OF NEVADA 1979, c. 42, §2, at 60 (amending N.R.S. §1.240 2).

18. See STATUTES OF NEVADA 1979, c. 42, §2, at 60 (amending N.R.S. §1.240 3).

19. See *State ex rel Department of Welfare v. District Court*, 85 Nev. 642, 646, 462 P.2d 37, 39 (1969).

20. See STATUTES OF NEVADA 1981, c. 152, §2, at — (repealing N.R.S. §1.240 1).

## Civil Procedure; witnesses—rights and compensation

N.R.S. §50 (new); §50.225 (amended).

AB 303 (May); STATS 1981, Ch 191.

Under federal law it is an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because the employee gives testimony in court proceedings dealing with labor relations.<sup>1</sup> Federal law also imposes a fine or term of imprisonment or both on anyone who corruptly impedes any federal witness.<sup>2</sup> Chapter 191 complements federal law by providing that an employer who terminates or threatens to terminate the employment of one who appears or is summoned to appear as a witness<sup>3</sup> is guilty of a misdemeanor<sup>4</sup> if

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1. See 18 U.S.C. §1503.

2. See 29 U.S.C. §158(a)(4).

3. See N.R.S. §174.405 3 (definition of witness).

4. See *id.* §193.120 3 (definition of misdemeanor).