

## **RULE 35. DISQUALIFICATION OF A JUSTICE OR JUDGE**

**(a) Motion for Disqualification.** A request that a justice or judge of the Supreme Court or Court of Appeals be disqualified from sitting in a particular case must be made by motion. Unless the court permits otherwise, the motion must be in writing and must be in the form required by Rule 27. A separate motion for disqualification must be filed for each justice or judge being challenged. A motion for disqualification that seeks the disqualification of more than one judge or justice will be stricken.

**(1) Time to File.** A motion to disqualify a justice or judge must be filed with the clerk of the Supreme Court within 60 days after docketing of the appeal under Rule 12, together with proof of service on all other parties. Except for good cause shown, the failure to file a timely motion to disqualify will be deemed a waiver of the moving party's right to object to a justice's or judge's participation in a case.

### **(2) Contents of a Motion.**

**(A) Grounds, Supporting Facts, and Legal Authorities.** A motion must state clearly and concisely in separately numbered paragraphs each ground relied upon as a basis for disqualification with the specific facts alleged in support thereof and the legal argument, including citations to relevant cases, statutes, or rules, necessary to support it.

**(B) Verification.** All assertions of fact in a motion must be supported by proper sworn averments in an affidavit or by citations to the specific page and line where support appears in the record of the case.

(i) A verification by affidavit must be served and filed with the motion.

(ii) The affidavit must be made upon personal knowledge by a person or persons affirmatively shown competent to testify and must set forth only those facts that would be admissible in evidence.

(iii) The affidavit must set forth the date or dates when the moving party first became aware of the facts set forth in the motion.

**(C) Attorney's Certificate.** A motion under this Rule filed by a party represented by counsel must contain a certificate signed by at least 1 attorney of record who is an active member of the bar of this state. The certificate must contain the following information:

(i) A representation that the signing attorney has read the motion and supporting documents;

(ii) A representation that the motion and supporting documents are in the form required by this Rule; and

(iii) A representation that, based on personal investigation, the signing attorney believes all grounds asserted to be legally valid and all supporting factual allegations to be true, and that the motion is made in good faith and not for purposes of delay or for other improper motive.

**(D) Striking a Motion Without an Attorney's Certificate.** If a motion does not contain the certification required by Rule 35(a)(2)(C), it must be stricken unless such a certification is provided within 14 days after the omission is called to the attorney's attention.

**(b) Response.**

**(1) By a Party.** Any party may file a response to a motion to disqualify a justice or judge. The response must be filed within 14 days after service of the motion unless the court shortens or extends the time.

**(2) By the Justice or Judge.** The challenged justice or judge may submit a response to the motion in writing or orally at any hearing that may be ordered by the court.

**(c) Reply.** A reply may not be filed unless permission is first obtained from the court.

#### **REVIEWING NOTE**

Subdivision (a) is substantively modified to require the filing of a separate motion for disqualification for each justice or judge being challenged.