

2021 Regular Session

HOUSE BILL NO. 328

BY REPRESENTATIVE CORMIER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUDGES: Provides relative to the recusal of judges in civil matters

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 151, relative to the recusal of judges;  
3 to provide for the grounds for recusal; to require recusal in certain circumstances; to  
4 allow for recusal in certain circumstances; to provide for the duties of the judge; to  
5 provide for disclosures by the judge; to provide for an agreement between the parties  
6 to allow the judge to preside; to provide for definitions; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Article 151 is hereby amended and reenacted to  
10 read as follows:

11 Art. 151. Grounds

12 A. ~~A judge of any court, trial or appellate, shall be recused when he:~~ A judge  
13 shall recuse himself in any proceeding in which the judge's impartiality might  
14 reasonably be questioned, including but not limited to the following circumstances:

15 (1) ~~Is a witness in the cause;~~ The judge has a personal bias or prejudice  
16 concerning a party or a party's lawyer or personal knowledge of facts that are in  
17 dispute in the proceeding.

18 (2) ~~Has been employed or consulted as an attorney in the cause or has~~  
19 ~~previously been associated with an attorney during the latter's employment in the~~  
20 ~~cause, and the judge participated in representation in the cause;~~ The judge knows that  
21 the judge, the judge's spouse or domestic partner, or a person within the third degree

1 of relationship to either of them or the spouse or domestic partner of such a person  
2 is any of the following:

3 (a) A party to the proceeding or an officer, director, general partner,  
4 managing member, or trustee of a party.

5 (b) Acting as a lawyer in the proceeding.

6 (c) A person who has more than a de minimis interest that could be  
7 substantially affected by the proceeding.

8 (d) Likely to be a material witness in the proceeding.

9 ~~(3) Is the spouse of a party, or of an attorney employed in the cause or the~~  
10 ~~judge's parent, child, or immediate family member is a party or attorney employed~~  
11 ~~in the cause; or~~ The judge knows that he, individually or as a fiduciary, or the judge's  
12 spouse, domestic partner, parent, or child, or any other member of the judge's family  
13 residing in the judge's household, has an economic interest in the subject matter in  
14 controversy or in a party to the proceeding.

15 ~~(4) Is biased, prejudiced, or interested in the cause or its outcome or biased~~  
16 ~~or prejudiced toward or against the parties or the parties' attorneys or any witness to~~  
17 ~~such an extent that he would be unable to conduct fair and impartial proceedings.~~  
18 The judge knows or learns by means of a timely motion that a party, a party's lawyer,  
19 or the law firm of a party's lawyer has made aggregate contributions to the judge's  
20 campaign in an amount that exceeds what is reasonable and appropriate for an  
21 individual or an entity.

22 (5) The judge, while a judge or a judicial candidate, has made a public  
23 statement, other than in a court proceeding, judicial decision, or opinion, that  
24 commits or appears to commit the judge to reach a particular result or rule in a  
25 particular way in the proceeding or controversy.

26 (6) The judge has done any of the following:

27 (a) Served as a lawyer in the matter in controversy or was associated with  
28 a lawyer who participated substantially as a lawyer in the matter during such  
29 association.

1           (b) Served in governmental employment and in such capacity participated  
2           personally and substantially as a lawyer or public official concerning the proceeding  
3           or has publicly expressed in such capacity an opinion concerning the merits of the  
4           particular matter in controversy.

5           (c) Was a material witness concerning the matter.

6           (d) Previously presided as a judge over the matter in another court.

7           (e) Has been involved in personal litigation with or against a party or a  
8           party's lawyer.

9           (f) Made a public statement criticizing a party or a party's lawyer.

10           (7) The judge is facing criminal prosecution, an administrative hearing, or  
11           there exists any contemporaneous leverage over the judge or his property by a party  
12           or a party's lawyer, or the lawyer's family member to the fourth degree.

13           (8) The judge is involved in an intimate relationship with a party or a party's  
14           lawyer.

15           ~~B. A judge of any court, trial or appellate, may be recused when he:~~

16           ~~(1) Has been associated with an attorney during the latter's employment in~~  
17           ~~the cause;~~

18           ~~(2) (9) At the time of the hearing of any contested issue in the cause, the~~  
19           ~~judge has continued to employ, to represent him personally, the attorney lawyer~~  
20           ~~actually handling the cause (not just a member of that attorney's lawyer's firm), and~~  
21           ~~in this case the employment shall be disclosed to each party in the cause;.~~

22           ~~(3) Has performed a judicial act in the cause in another court; or~~

23           ~~(4) Is B. A judge may recuse himself if he is related to: a party or the spouse~~  
24           ~~of a party, within in the fourth degree; an attorney employed in the cause or the~~  
25           ~~spouse of the attorney, within the second degree; or if the judge's spouse, parent,~~  
26           ~~child, or immediate family member living in the judge's household has a substantial~~  
27           ~~economic interest in the subject matter in controversy sufficient to prevent the judge~~  
28           ~~from conducting fair and impartial proceedings in the cause.~~

1           C. A judge shall keep informed about the judge's personal and fiduciary  
2 economic interests and make a reasonable effort to keep informed about the personal  
3 economic interests of the judge's spouse or domestic partner and minor children  
4 residing in the judge's household.

5           D. A judge subject to recusal under this Article, other than for bias or  
6 prejudice under Subparagraph(A)(1) of this Article, may disclose on the record the  
7 basis of the judge's recusal and may ask the parties and their lawyers to consider  
8 outside the presence of the judge and court personnel whether to waive recusal. If  
9 following the disclosure the parties and lawyers agree, without participation by the  
10 judge or court personnel, that the judge should not be recused, the judge may  
11 participate in the proceeding. The agreement shall be incorporated into the record  
12 of the proceeding.

13           E. In any cause in which the state, or a political subdivision thereof, or a  
14 religious body or corporation is interested, the fact that the judge is a citizen of the  
15 state or a resident of the political subdivision, or pays taxes thereto, or is a member  
16 of the religious body or corporation, is not a ground for ~~recusation~~ recusal.

17           F. For purposes of this Section, the following words or phrases shall have the  
18 following meanings:

19           (1) "Aggregate," in relation to contributions for a candidate, means not only  
20 contributions in cash or in kind made directly to a candidate's campaign committee,  
21 but also all contributions made indirectly with the understanding that they will be  
22 used to support the election of a candidate or to oppose the election of the candidate's  
23 opponent.

24           (2) "Contribution" means both financial and in-kind contributions, such as  
25 goods, professional or volunteer services, advertising, and other types of assistance,  
26 which, if obtained by the recipient otherwise, would require a financial expenditure.

27           (3) "De minimis" means an insignificant interest that could not raise a  
28 reasonable question regarding the judge's impartiality.

1           (4) "Domestic partner" means a person with whom another person maintains  
2           a household and an intimate relationship, other than a person to whom he is legally  
3           married.

4           (5) "Economic interest" means ownership of more than a de minimis legal  
5           or equitable interest. Except for situations in which the judge participates in the  
6           management of such a legal or equitable interest, or the interest could be  
7           substantially affected by the outcome of a proceeding before a judge, it does not  
8           include any of the following:

9           (a) An interest in the individual holdings within a mutual or common  
10          investment fund.

11          (b) An interest in securities held by an educational, religious, charitable,  
12          fraternal, or civic organization in which the judge or the judge's spouse, domestic  
13          partner, parent, or child serves as a director, an officer, an advisor, or other  
14          participant.

15          (c) A deposit in a financial institution or deposits or proprietary interests the  
16          judge may maintain as a member of a mutual savings association or credit union, or  
17          similar proprietary interests.

18          (d) An interest in the issuer of government securities held by the judge.

19          (6) "Fiduciary" includes relationships such as executor, administrator,  
20          trustee, or guardian.

21          (7) "Impartiality" means absence of bias or prejudice in favor of, or against,  
22          particular parties or classes of parties, as well as maintenance of an open mind in  
23          considering issues that may come before a judge.

24          (8) "Judicial candidate" means any person, including a sitting judge, who is  
25          seeking selection for or retention in judicial office by election or appointment. A  
26          person becomes a candidate for judicial office as soon as he makes a public  
27          announcement of candidacy, declares or files as a candidate with the election or  
28          appointment authority, authorizes or, where permitted, engages in solicitation or

1 acceptance of contributions or support, or is nominated for election or appointment  
2 to office.

3 (9) "Knowledge" and "knows" mean actual knowledge of the fact in  
4 question. A person's knowledge may be inferred from circumstances.

5 (10) "Member of the judge's family" means a spouse, domestic partner,  
6 child, grandchild, parent, grandparent, or other relative or person with whom the  
7 judge maintains a close familial relationship.

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 328 Original

2021 Regular Session

Cornier

**Abstract:** Provides grounds for the recusal of judges.

Present law provides that a judge of any court shall be recused when he does any of the following:

- (1) Is a witness in the cause.
- (2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause.
- (3) Is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause.
- (4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

Proposed law repeals present law and provides that a judge shall recuse himself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of facts that are in dispute in the proceeding.
- (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them or the spouse or domestic partner of such a person is any of the following:
  - (a) A party to the proceeding or an officer, director, general partner, managing member, or trustee of a party.
  - (b) Acting as a lawyer in the proceeding.

- (c) A person who has more than a de minimis interest that could be substantially affected by the proceeding.
  - (d) Likely to be a material witness in the proceeding.
- (3) The judge knows that he, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.
  - (4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has made aggregate contributions to the judge's campaign in an amount that exceeds what is reasonable and appropriate for an individual or an entity.
  - (5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
  - (6) The judge has done any of the following:
    - (a) Served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association.
    - (b) Served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy.
    - (c) Was a material witness concerning the matter.
    - (d) Previously presided as a judge over the matter in another court.
    - (e) Has been involved in personal litigation with or against a party or a party's lawyer.
    - (f) Made a public statement criticizing a party or a party's lawyer.
  - (7) The judge is facing criminal prosecution, an administrative hearing, or there exists any contemporaneous leverage over the judge or his property by a party or a party's attorney, or the attorney's family member to the fourth degree.
  - (8) The judge is involved in an intimate relationship with a party or a party's attorney.

Present law provides that a judge may be recused when he does any of the following:

- (1) Has been associated with an attorney during the latter's employment in the cause.
- (2) Has performed a judicial act in the cause in another court.
- (3) Is related to an attorney employed in the cause or the spouse of the attorney, within the second degree.
- (4) The judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy

sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

Proposed law repeals present law.

Present law provides that a judge may be recused when at the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the lawyer actually handling the cause and in this case the employment shall be disclosed to each party in the cause.

Proposed law retains present law but makes the grounds for recusal mandatory.

Present law further provides that a judge may be recused when he is related to a party or the spouse of a party, within the fourth degree. Proposed law provides that the judge may be recused when he is related to a party or the spouse of a party in the fourth degree.

Proposed law requires a judge to keep informed of his personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of his spouse or domestic partner and minor children residing in his household.

Proposed law provides that a judge subject to recusal, other than for bias or prejudice, may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider outside the presence of the judge and court personnel whether to waive recusal.

Proposed law further provides that if following the disclosure the parties and lawyers agree that the judge should not be recused, the judge may participate in the proceeding and the agreement shall be incorporated into the record of the proceeding.

Present law provides that in any cause in which the state, or a political subdivision thereof, or a religious body or corporation is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or is a member of the religious body or corporation, is not a ground for recusal.

Proposed law retains present law.

Proposed law provides definitions for "aggregate", "contribution", "de minimis", "domestic partner", "economic interest", "fiduciary", "impartiality", "judicial candidate", "knowledge", and "member of the judge's family".

(Amends C.C.P. Art. 151)