

ACT No. 143

2021 Regular Session

HOUSE BILL NO. 39

BY REPRESENTATIVE MAGEE AND SENATORS ALLAIN AND FESI

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Chapter 3 of Title I of Book I of the Code of Civil Procedure,
3 comprised of Code of Civil Procedure Articles 151 through 159, the heading of
4 Chapter 3 of Title I of Book VIII of the Code of Civil Procedure, the heading of
5 Code of Civil Procedure Article 4861 and Code of Civil Procedure Articles 4862,
6 4863, and 4864, the heading of Code of Civil Procedure Article 4865, and Code of
7 Civil Procedure Article 4866, relative to the recusal of judges; to provide for the
8 grounds for recusal; to provide for disclosures required of judges; to provide for
9 recusal on the court's own motion; to provide for the procedure for recusal; to
10 provide for the selection of the judge to try the motion to recuse; to provide for the
11 selection of the judge after recusal; to provide for the motion to recuse; to provide
12 for the appointment of judge ad hoc; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Chapter 3 of Title I of Book I of the Code of Civil Procedure, comprised
15 of Code of Civil Procedure Articles 151 through 159, the heading of Chapter 3 of Title I of
16 Book VIII of the Code of Civil Procedure, the heading of Code of Civil Procedure Article
17 4861 and Code of Civil Procedure Articles 4862, 4863, and 4864, the heading of Code of
18 Civil Procedure Article 4865, and Code of Civil Procedure Article 4866 are hereby amended
19 and reenacted to read as follows:

20 CHAPTER 3. ~~RECUSATION~~ RECUSAL OF JUDGES

21 Art. 151. Grounds

22 A. A judge of any trial or appellate court, ~~trial or appellate~~, shall be recused
23 ~~when he~~ upon any of the following grounds:

24 (1) ~~Is~~ The judge is a witness in the cause;

1 (2) Has The judge has been employed or consulted as an attorney in the
 2 cause or has previously been associated with an attorney during the latter's
 3 employment in the cause, and the judge participated in representation in the cause;

4 (3) ~~Is~~ The judge is the spouse of a party, or of an attorney employed in the
 5 cause or the judge's parent, child, or immediate family member is a party or attorney
 6 employed in the cause; ~~or,~~

7 (4) ~~Is~~ The judge is biased, prejudiced, or interested in the cause or its
 8 outcome or biased or prejudiced toward or against the parties or the parties' attorneys
 9 or any witness to such an extent that ~~he~~ the judge would be unable to conduct fair
 10 and impartial proceedings.

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

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

14 (2) ~~At the time of the hearing of any contested issue in the cause, has~~
 15 ~~continued to employ, to represent him personally, the attorney actually handling the~~
 16 ~~cause (not just a member of that attorney's firm), and in this case the employment~~
 17 ~~shall be disclosed to each party in the cause;~~

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

19 (4) ~~Is related to: a party or the spouse of a party, within the fourth degree;~~
 20 ~~an attorney employed in the cause or the spouse of the attorney, within the second~~
 21 ~~degree; or if the judge's spouse, parent, child, or immediate family member living in~~
 22 ~~the judge's household has a substantial economic interest in the subject matter in~~
 23 ~~controversy sufficient to prevent the judge from conducting fair and impartial~~
 24 ~~proceedings in the cause.~~

25 A judge of any trial or appellate court shall also be recused when there exists
 26 a substantial and objective basis that would reasonably be expected to prevent the
 27 judge from conducting any aspect of the cause in a fair and impartial manner.

28 C. In any cause in which the state; or a political subdivision thereof; ~~or a~~
 29 ~~religious body or corporation~~ is interested, the fact that the judge is a citizen of the
 30 state or a resident of the political subdivision, or pays taxes thereto, ~~or is a member~~

1 ~~of the religious body or corporation~~, is not a ground for ~~recusation~~ recusal. In any
 2 cause in which a religious body or religious corporation is interested, the fact that the
 3 judge is a member of the religious body or religious corporation is not alone a
 4 ground for recusal.

5 Comments - 2021

6 (a) Former Paragraph B of this Article, which set forth permissive grounds
 7 for recusal, has been deleted, and its substance has been moved to a new provision,
 8 Article 152, which provides for the mandatory disclosures that a judge must make
 9 to all parties and attorneys in the cause.

10 (b) A new Paragraph B has been added to provide an additional mandatory
 11 ground for recusal when a substantial and objective basis exists that would
 12 reasonably be expected to prevent the judge from conducting any aspect of the cause
 13 in a fair and impartial manner. This provision is intended to serve as a catch-all
 14 supplementing the mandatory grounds for recusal set forth in Paragraph A and to
 15 incorporate a clearer, more objective standard than the language of Canon 3C of the
 16 Code of Judicial Conduct, which provides that a judge should recuse himself when
 17 "the judge's impartiality might reasonably be questioned."

18 (c) This Article and Article 153(B) are intended to set forth the exclusive
 19 grounds for the recusal of a judge in a civil proceeding.

20 Art. 152. Disclosures

21 A. A judge of any trial or appellate court shall disclose, to the best of his
 22 information and belief, the existence of any of the following to all attorneys and
 23 unrepresented parties in the cause:

24 (1) The judge has been associated with an attorney during the latter's
 25 employment in the cause.

26 (2) At the time of the hearing of any contested issue in the cause, the judge
 27 has continued to employ, to represent him personally, the attorney actually handling
 28 the cause or a member of that attorney's firm.

29 (3) The judge performed a judicial act in the cause in another court.

30 (4) The judge is related to any of the following:

31 (a) A party or the spouse of a party, within the fourth degree.

32 (b) An attorney employed in the cause, the spouse of the attorney, or any
 33 member of the attorney's law firm, within the second degree.

34 (5) The judge's spouse, parent, child, or immediate family member has a
 35 substantial economic interest in the subject matter in controversy.

1 a copy of the recusal and the written reasons therefor to the judicial administrator of
 2 the supreme court.

3 ~~D. If a judge recuses himself pursuant to this Article, he shall provide in~~
 4 ~~writing the specific grounds under Article 151 for which the recusal is ordered within~~
 5 ~~fifteen days of the rendering of the order of recusal.~~

6 Comments - 2021

7 Paragraph C of this Article is new and requires the judge to file written
 8 reasons containing the factual basis for the judge's self-recusal prior to the cause
 9 being allotted to another judge. This provision also requires the judge to provide a
 10 copy of both the recusal and the written reasons for the recusal to the judicial
 11 administrator of the supreme court. This reporting requirement reflects the
 12 countervailing considerations of a judge's duty to sit and his obligation to recuse
 13 when a valid ground for recusal exists. A judge is "not at liberty, nor does he have
 14 the right, to take himself out of a case and burden another judge with his
 15 responsibility without good and legal cause." In re Lemoine, 686 So. 2d 837 (La.
 16 1997).

17 ~~Art. 153. Judge may act until recused or motion for recusation filed~~

18 ~~Until a judge has recused himself, or a motion for his recusation has been~~
 19 ~~filed, he has full power and authority to act in the cause. The judge to whom the~~
 20 ~~motion to recuse is assigned shall have full power and authority to act in the cause~~
 21 ~~pending the disposition of the motion to recuse.~~

22 Art. 154. Procedure for ~~recusation~~ recusal of district court judge

23 A. A party desiring to recuse a judge of a district court shall file a written
 24 motion therefor assigning the ground for ~~recusation~~ recusal under Article 151. This
 25 motion shall be filed ~~prior to trial or hearing unless the party discovers the facts~~
 26 ~~constituting the ground for recusation thereafter, in which event it shall be filed~~
 27 ~~immediately after these facts are discovered, but prior to judgment~~ no later than
 28 thirty days after discovery of the facts constituting the ground upon which the motion
 29 is based, but in all cases prior to the scheduling of the matter for trial. In the event
 30 that the facts constituting the ground upon which the motion to recuse is based occur
 31 after the matter is scheduled for trial or the party moving for recusal could not, in the
 32 exercise of due diligence, have discovered such facts, the motion to recuse shall be
 33 filed immediately after such facts occur or are discovered.

1 A. ~~After a trial judge recuses himself under the authority of Article 152(A),~~
 2 a judge ad hoc shall be assigned to try the cause in the manner provided by Articles
 3 155 and 156 for the appointment of a judge ad hoc to try the motion to recuse. When
 4 a trial judge is recused after a trial of the motion therefor, the case shall be reassigned
 5 to a new judge for trial of the cause under the provisions of Code of Civil Procedure
 6 Articles 155 and 156.

7 B. ~~After a trial judge recuses himself under the authority of Article 152(B)~~
 8 he shall make written application to the supreme court for the appointment of another
 9 district judge as judge ad hoc to try the cause. ~~The supreme court shall appoint a~~
 10 judge from a judicial district other than the judicial district of the recused judge as
 11 judge ad hoc to try the cause.

12 C. ~~The judge ad hoc has the same power and authority to dispose of the~~
 13 cause as the recused judge has in cases in which no ground for recusation exists.

14 ~~Art. 158. Supreme court appointment of district judge to try cause when judge~~
 15 recused

16 ~~In a cause in which the district judge is recused, even when a judge ad hoc~~
 17 has been appointed for the trial of the cause under Article 157, a party may apply to
 18 the supreme court for the appointment of another district judge as judge ad hoc to try
 19 the cause. ~~If the supreme court deems it in the interest of justice, such appointment~~
 20 shall be made.

21 ~~The order of the supreme court appointing a judge ad hoc shall be entered on~~
 22 its minutes. ~~The clerk of the supreme court shall forward two certified copies of the~~
 23 order, one to the judge ad hoc appointed and the other to the clerk of the district court
 24 where the cause is pending, for entry in its minutes.

25 ~~Art. 159~~ 157. Recusation Recusal of supreme court justice

26 A. A party desiring to recuse a justice of the supreme court shall file a
 27 written motion therefor assigning the ground for recusal under Article 151. When
 28 a written motion is filed to recuse a justice of the supreme court, ~~he~~ the justice may
 29 recuse himself or the motion shall be heard by the other justices of the court.

1 Art. 4862. Motion to recuse

2 When a written motion is made to recuse a parish court or city court judge
 3 or a justice of the peace, ~~he~~ the judge or justice of the peace shall either recuse
 4 himself, or the motion to recuse shall be tried in the manner provided by Article
 5 4863.

6 Art. 4863. Determination of ~~recusation~~ recusal; appointment of judge ad hoc

7 A. In a parish or city court having more than one judge, the motion to recuse
 8 shall be tried by another judge of the same court, ~~and, if the judge is recused, the case~~
 9 ~~shall be tried by another judge of the same court.~~ The manner in which the judge is
 10 selected to try the recusal ~~and, in the event of recusal, to try the case,~~ shall be
 11 provided by rule of court.

12 B. In all other cases, the motion shall be tried by ~~the district court and, if the~~
 13 ~~judge is recused, the district court shall try the case or shall appoint another judge of~~
 14 ~~a district, parish, or city court to try the case~~ an ad hoc judge appointed by the
 15 supreme court.

16 Art. 4864. Appointment of judge ad hoc ~~when judge recuses himself~~ after recusal

17 A. When a judge of a parish or city court recuses himself or is recused, ~~he~~
 18 ~~shall appoint~~ another judge of the same ~~parish or city court~~ shall be appointed to try
 19 the cause, if that court has more than one division; ~~otherwise, he shall appoint either~~
 20 ~~a parish or city court judge from an adjoining parish or, as judge-ad-hoc, an attorney~~
 21 ~~domiciled in the parish who has the qualifications of a parish or city court judge.~~
 22 The manner in which the judge is selected to try the cause shall be provided by rule
 23 of court. In all other cases, an ad hoc judge shall be appointed by the supreme court
 24 to try the cause.

25 B. When a justice of the peace recuses himself, ~~he shall appoint~~ another
 26 justice of the peace shall be appointed by the supreme court to try the ~~case~~ cause.

27 Art. 4865. Appointment of judge ad hoc in event of temporary inability of parish or
 28 city court judge to preside

29 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 4866. Power and authority of judge ad hoc

2 A judge ad hoc appointed under the provisions of Articles 4861 through 4865

3 shall have the same power and authority to act on the ~~cases~~ causes or on the dates to

4 which appointed as the judge whom he replaces would have.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____