

Removal or Recusal of a Judge from a Case
Judge Greg Galler
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Every judge has their own unique background and history, including strengths and weaknesses. Can anything be done if someone feels that the assigned judge may not be the best one to hear their case? There are a number of options.

First, each party has a right to file one Notice to Remove in each case. The notice need not list any reason for the removal. Because of this it is difficult to speculate as to why a judge is removed. The bottom line is that the party (or their attorney) simply feels that another judge would be a better fit for the case.

Possible reasons are numerous. Many years ago, some DWI defense lawyers removed a judge because that judge had a close family member die in a drunk driving crash. I recall another judge being removed in a complex civil case because attorneys were concerned that the judge was new and did not have much experience in that specific area of the law.

There are limitations to the rule which are designed to maintain the efficient administration of justice.

First, there are time deadlines to file a removal notice. Different types of cases can have slightly different requirements. Generally, parties have from 7 to ten days to file a removal notice. Failure to file in a timely manner makes the removal ineffective.

Second, a judge can't be removed after the judge has already appeared on a case. Some cases are scheduled before the time deadline expires. In that case, the removal notice needs to be filed before the hearing takes place. Because of this, some attorneys carry blank removal notices with them in case they feel that they are needed. If they don't file by the time of the hearing, then they can't remove the judge.

These rules are also designed to improve the efficiency of how cases progress. Without the rules, a judge might hear a case for several weeks or months and then be removed. This would require the case to start all over again with a different judge. That would greatly add to the time and cost of the case for everyone involved.

Judges also sometimes remove themselves from cases. This is called a "recusal." Judges review assigned cases to make sure they have no conflicts. A judge might be assigned a case where a 1st cousin is one of the parties, or perhaps it involves a close friend, or neighbor. Judges don't want to hear cases where their "impartiality might reasonably be questioned." However, judges must be careful not to recuse themselves without good reason as it otherwise puts an undue burden on other judges.

When a judge recuses or is removed, the case is then assigned to another judge. The newly assigned judge would also review the case. Sometimes all of the judges in a courthouse might recuse themselves. If that happens, then a judge from another county or a retired judge would hear the case.

Judge Galler is chambered in Washington County. If you have a general question about the law or courts for Judge Galler, send your question to the editor of this newspaper. Learn more about Judge Galler, or listen to a podcast of his columns at www.judgegreggaller.com.