

ACT No. 143

2021 Regular Session

HOUSE BILL NO. 39

BY REPRESENTATIVE MAGEE AND SENATORS ALLAIN AND FESI

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 B. Upon disclosure, any party may file a motion that sets forth a ground for
 2 recusal under Article 151.

3 Comments - 2021

4 (a) This Article is new, but its substance is taken from former Paragraph B
 5 of Article 151, which previously set forth permissive grounds for recusal. The
 6 information listed in Paragraph A is now required to be disclosed by the judge to all
 7 attorneys and unrepresented parties in the cause. If the information disclosed gives
 8 rise to a ground for recusal under Article 151, any party may file a motion to recuse
 9 the judge pursuant to the procedure set forth in Article 154.

10 (b) Under Paragraph (A)(4), the judge must disclose whether he is related to
 11 an attorney or the spouse of an attorney within the second degree, which includes the
 12 judge's children, grandchildren, parents, grandparents, and siblings. The judge must
 13 also disclose whether he is related to a party or the spouse of a party within the
 14 fourth degree, which includes the family members previously listed as well as the
 15 judge's nieces and nephews, aunts and uncles, first cousins, great-grandchildren,
 16 great-grandparents, and great-aunts and uncles, among others. For an explanation
 17 of how to determine the degree of relationship between the judge and an attorney or
 18 party and their spouses, see Civil Code Articles 900 and 901.

19 (c) Paragraph (A)(5) of this Article was taken from former Article 151(B)(4)
 20 and requires the judge to disclose if his spouse, parent, child, or immediate family
 21 member has a substantial economic interest in the subject matter in controversy.
 22 Such disclosure must be made in all cases regardless of whether the judge's
 23 immediate family member is "living in the judge's household," as was provided
 24 under former Article 151(B)(4).

25 (d) This Article's requirement that a judge of any "trial" court make certain
 26 disclosures to all parties and attorneys in the cause applies not only to district court
 27 judges, but also to parish and city court judges as well as justices of the peace.

28 ~~Art. 152~~ 153. Recusation Recusal on court's own motion ~~or by supreme court~~

29 A. A judge may recuse himself in any cause in which a ground for recusal
 30 exists, whether or not a motion for his ~~recusation~~ recusal has been filed by a party
 31 ~~or not, in any cause in which a ground for recusation exists.~~

32 B. A district judge may recuse himself in any cause objecting to the
 33 candidacy or contesting the election for any office in which the district or jurisdiction
 34 of such office lies wholly within the judicial district ~~from~~ of the court on which the
 35 district judge is elected ~~is elected~~ serves.

36 C. ~~On the written application of a district judge, the supreme court may~~
 37 ~~recuse him for any reason which it considers sufficient.~~ Prior to the cause being
 38 allotted to another judge, a judge who recuses himself for any reason shall
 39 contemporaneously file in the record the order of recusal and written reasons that
 40 provide the factual basis for recusal under Article 151. The judge shall also provide

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 B. ~~In a district court having more than two judges, the motion to recuse shall~~
 2 ~~be referred to another judge of the district court for trial through the random process~~
 3 ~~of assignment in accordance with the provisions of Code of Civil Procedure Article~~
 4 ~~253.1.~~

5 Comments - 2021

6 (a) This Article has been amended to provide that in all cases where a motion
 7 to recuse has been referred for hearing, the motion shall be heard by an ad hoc judge
 8 appointed by the supreme court. This revision is intended to increase confidence in
 9 Louisiana's district courts by reducing or eliminating the potential for impartiality
 10 or bias that would result from allowing the motion to be heard by a judge of the same
 11 court as the judge who is the subject of the motion.

12 (b) Once a motion to recuse has been referred for hearing, this Article
 13 continues the rule that the judge who is the subject of the motion to recuse can no
 14 longer take any action in the cause. Rather, the ad hoc judge who is appointed by the
 15 supreme court shall have the power and authority to act in the cause until the motion
 16 to recuse is decided.

17 Art. 156. ~~Same, court having single judge~~ Selection of judge after recusal

18 A. When a ground assigned for the recusation of the judge of a district court
 19 having a single judge of a court having two or more judges is his interest in the
 20 cause, the judge shall appoint a district judge of an adjoining district to try the
 21 voluntarily recuses himself or is recused after a motion to recuse is heard, the cause
 22 shall be randomly assigned to another division or section of that court.

23 B. When any other ground is assigned for the recusation of such a district
 24 court judge in a single-judge district voluntarily recuses himself, he may appoint
 25 either a district judge of an adjoining district, or a lawyer domiciled in the judicial
 26 district who has the qualifications of a district judge, to try the motion to recuse the
 27 judge shall make a written request to the supreme court for the appointment of an ad
 28 hoc judge to hear the cause. When an ad hoc judge appointed by the supreme court
 29 to hear a recusal grants the motion to recuse, that judge shall request that an ad hoc
 30 judge be appointed to hear the cause.

31 ~~The order of court appointing the judge ad hoc shall be entered on its~~
 32 ~~minutes, and a certified copy of the order shall be sent to the judge ad hoc.~~

33 Art. 157. ~~Judge ad hoc appointed to try cause when judge recused; power of judge~~
 34 ~~ad hoc~~

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 B. When a justice of the supreme court recuses himself, or is recused, the
 2 court may do one of the following:

- 3 (1) Have the cause argued before and disposed of by the other justices, ~~or,~~
- 4 (2) Appoint a sitting or retired judge of a district court or a court of appeal
 5 having the qualifications of a justice of the supreme court to act for the recused
 6 justice in the hearing and disposition of the cause.

7 Art. ~~160~~ 158. ~~Recusation~~ Recusal of judge of court of appeal

8 A. A party desiring to recuse a judge of a court of appeal shall file a written
 9 motion therefor assigning the ground for recusal under Article 151. When a written
 10 motion is filed to recuse a judge of a court of appeal, ~~he~~ the judge may recuse
 11 himself or the motion shall be heard by ~~the other judges on the panel to which the~~
 12 ~~cause is assigned, or by all judges of the court, except the judge sought to be recused,~~
 13 ~~sitting en banc~~ an ad hoc judge appointed by the supreme court.

14 B. When a judge of a court of appeal recuses himself; or is recused, the court
 15 may ~~(1) have the cause argued before and disposed of by the other judges of the~~
 16 ~~panel to which it is assigned, or (2) appoint~~ shall randomly allot another of its judges;
 17 ~~a judge of a district court or a lawyer having the qualifications of a judge of a court~~
 18 ~~of appeal to act for~~ to sit on the panel in place of the recused judge ~~in the hearing and~~
 19 ~~disposition of the cause.~~

20 Art. ~~161~~ 159. ~~Recusation~~ Recusal of ad hoc judge ~~ad hoc~~

21 ~~A judge~~ An ad hoc judge appointed to try a motion to recuse a judge, or
 22 appointed to try the cause, may be recused on the grounds and in the manner
 23 provided in this Chapter for the ~~recusation~~ recusal of judges.

24 * * *

25 CHAPTER 3. ~~RECUSATION~~ RECUSAL OF JUDGES; APPOINTMENT
 26 OF JUDGES AD HOC

27 Art. 4861. ~~Recusation~~ Recusal of judges

28 * * *

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

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: _____