

2021 Regular Session

HOUSE BILL NO. 39

BY REPRESENTATIVE MAGEE

(On Recommendation of the Louisiana State Law Institute)

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

CIVIL/PROCEDURE: Provides relative to the recusal of judges

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 the Civil

18 Code of Civil Procedure Article 4866 are hereby amended and reenacted to read as follows:

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

2 Art. 151. Grounds

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

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

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

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

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

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

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

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

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

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

1 of such office lies wholly within the judicial district ~~from~~ of the court on which the
2 district judge is elected serves.

3 C. ~~On the written application of a district judge, the supreme court may~~
4 ~~recuse him for any reason which it considers sufficient.~~ Prior to the cause being
5 allotted to another judge, a judge who recuses himself for any reason shall
6 contemporaneously file in the record the order of recusal and written reasons that
7 provide the factual basis for recusal under Article 151. The judge shall also provide
8 a copy of the recusal and the written reasons therefor to the judicial administrator of
9 the supreme court.

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

13 Comments - 2021

14 Paragraph C of this Article is new and requires the judge to file written
15 reasons containing the factual basis for the judge's self-recusal prior to the cause
16 being allotted to another judge. This provision also requires the judge to provide a
17 copy of both the recusal and the written reasons for the recusal to the judicial
18 administrator of the supreme court. This reporting requirement reflects the
19 countervailing considerations of a judge's duty to sit and his obligation to recuse
20 when a valid ground for recusal exists. A judge is "not at liberty, nor does he have
21 the right, to take himself out of a case and burden another judge with his
22 responsibility without good and legal cause." In re Lemoine, 686 So. 2d 837 (La.
23 1997).

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

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

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

30 A. A party desiring to recuse a judge of a district court shall file a written
31 motion therefor assigning the ground for ~~recusation~~ recusal under Article 151. This
32 motion shall be filed ~~prior to trial or hearing unless the party discovers the facts~~
33 ~~constituting the ground for recusation thereafter, in which event it shall be filed~~
34 ~~immediately after these facts are discovered, but prior to judgment~~ no later than

1 thirty days after discovery of the facts constituting the ground upon which the motion
 2 is based, but in all cases prior to the scheduling of the matter for trial. In the event
 3 that the facts constituting the ground upon which the motion to recuse is based occur
 4 after the matter is scheduled for trial or the party moving for recusal could not, in the
 5 exercise of due diligence, have discovered such facts, the motion to recuse shall be
 6 filed immediately after such facts occur or are discovered.

7 B. If a valid ground for recusation is set forth in the motion to recuse sets
 8 forth a ground for recusal under Article 151, the judge shall either recuse himself;
 9 or refer the motion to another judge or a judge make a written request to the supreme
 10 court for the appointment of an ad hoc judge; as provided in Articles Article 155 and
 11 156, for a hearing.

12 C. If the motion to recuse is not timely filed in accordance with Paragraph
 13 A of this Article or fails to set forth a ground for recusal under Article 151, the judge
 14 may deny the motion without the appointment of an ad hoc judge or a hearing but
 15 shall provide written reasons for the denial.

Comments - 2021

17 (a) Paragraph A of this Article has been amended to require a motion to
 18 recuse to be filed no later than thirty days after discovery of the facts constituting the
 19 ground upon which the motion is based, but in all cases prior to the scheduling of the
 20 matter for trial. This time limitation has been imposed to prevent the parties from
 21 delaying the proceedings by using a late-filed motion to recuse as a manner of
 22 obtaining a continuance of the trial. This provision recognizes that in some cases,
 23 the facts constituting the ground upon which the motion to recuse is based occur
 24 after, or could not have been discovered before, the matter is scheduled for trial. In
 25 cases that fall under this exception, Paragraph A provides that the motion to recuse
 26 shall be filed immediately after such facts occur or are discovered.

27 (b) Paragraph B of this Article has been amended to provide that when a
 28 motion setting forth a ground for recusal has been timely filed, the judge who is the
 29 subject of the motion shall either recuse himself or request in writing that the
 30 supreme court appoint an ad hoc judge to hear the motion to recuse.

31 (c) If the motion to recuse is not timely filed or fails to set forth a ground for
 32 recusal, Paragraph C of this Article permits the judge who is the subject of the
 33 motion to deny it without the appointment of an ad hoc judge or a hearing, provided
 34 that the judge gives written reasons for such denial. If a party disagrees with the
 35 judge's denial of the motion to recuse pursuant to Paragraph C, the party may apply
 36 for a supervisory writ or emergency supervisory writ seeking review of the judge's
 37 decision.

1 Art. 155. Selection of judge to try motion to recuse; ~~court having two or more~~
2 judges

3 A. ~~In a district court having two judges, the judge who is sought to be~~
4 ~~recused shall have the~~ Once a motion to recuse that sets forth a ground for recusal
5 under Article 151 is referred to the other judge of the court for trial of for hearing,
6 the supreme court shall appoint an ad hoc judge to hear the motion to recuse, and
7 only the ad hoc judge to whom the motion is assigned shall have the power and
8 authority to act in the cause pending disposition of the motion.

9 B. ~~In a district court having more than two judges, the motion to recuse shall~~
10 ~~be referred to another judge of the district court for trial through the random process~~
11 ~~of assignment in accordance with the provisions of Code of Civil Procedure Article~~
12 ~~253.1.~~

13 Comments - 2021

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

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

25 Art. 156. ~~Same; court having single~~ Selection of judge after recusal

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

31 B. When any other ground is assigned for the recusation of such a district
32 court judge in a single-judge district voluntarily recuses himself, he may appoint
33 either a district judge of an adjoining district, or a lawyer domiciled in the judicial
34 district who has the qualifications of a district judge, to try the motion to recuse the

1 judge shall make a written request to the supreme court for the appointment of an ad
2 hoc judge to hear the cause. When an ad hoc judge appointed by the supreme court
3 to hear a recusal grants the motion to recuse, that judge shall request that an ad hoc
4 judge be appointed to hear the cause.

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

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

9 ~~A. After a trial judge recuses himself under the authority of Article 152(A),~~
10 ~~a judge ad hoc shall be assigned to try the cause in the manner provided by Articles~~
11 ~~155 and 156 for the appointment of a judge ad hoc to try the motion to recuse. When~~
12 ~~a trial judge is recused after a trial of the motion therefor, the case shall be reassigned~~
13 ~~to a new judge for trial of the cause under the provisions of Code of Civil Procedure~~
14 ~~Articles 155 and 156.~~

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

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

22 ~~Art. 158. Supreme court appointment of district judge to try cause when judge~~
23 ~~recused~~

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

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

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

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

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

12 (1) Have the cause argued before and disposed of by the other justices; ~~or,~~

13 (2) Appoint a sitting or retired judge of a district court or a court of appeal
14 having the qualifications of a justice of the supreme court to act for the recused
15 justice in the hearing and disposition of the cause.

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

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

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

1 Art. ~~461~~ 159. ~~Recusation~~ Recusal of ad hoc judge ~~ad hoc~~

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

5 * * *

6 CHAPTER 3. ~~RECUSATION~~ RECUSAL OF JUDGES; APPOINTMENT
7 OF JUDGES AD HOC

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

9 * * *

10 Art. 4862. Motion to recuse

11 When a written motion is made to recuse a parish court or city court judge
12 or a justice of the peace, ~~he~~ the judge or justice of the peace shall either recuse
13 himself, or the motion to recuse shall be tried in the manner provided by Article
14 4863.

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

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

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

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

26 A. When a judge of a parish or city court recuses himself or is recused, ~~he~~
27 ~~shall appoint~~ another judge of the same ~~parish or city court~~ shall be appointed to try
28 the cause, if that court has more than one division; ~~otherwise, he shall appoint either~~
29 ~~a parish or city court judge from an adjoining parish or, as judge-ad-hoc, an attorney~~

1 ~~domiciled in the parish who has the qualifications of a parish or city court judge.~~

2 The manner in which the judge is selected to try the cause shall be provided by rule
3 of court. In all other cases, an ad hoc judge shall be appointed by the supreme court
4 to try the cause.

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

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

9 * * *

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

11 A judge ad hoc appointed under the provisions of Articles 4861 through 4865
12 shall have the same power and authority to act on the ~~cases~~ causes or on the dates to
13 which appointed as the judge whom he replaces would have.

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 39 Engrossed

2021 Regular Session

Magee

Abstract: Provides with respect to the recusal of judges.

Present law (C.C.P. Art. 151) sets forth mandatory and permissive grounds for recusal.

Proposed law (C.C.P. Art. 151) retains the mandatory grounds for recusal provided by present law and adds an additional ground requiring a judge to be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner. Proposed law also makes minor technical corrections.

Proposed law (C.C.P. Art. 152) makes the permissive grounds for recusal provided by present law disclosures that are required to be made by the judge to all attorneys and unrepresented parties. Proposed law removes the requirement under present law that the judge's relative with a substantial economic interest in the cause be living in the judge's household and provides that any party may file a motion to recuse the judge if the disclosed information gives rise to a ground for recusal.

Present law (C.C.P. Art. 152) provides for the recusal of a judge on his own motion or by the supreme court and requires a judge who self-recuses to provide the ground for recusal in writing within 15 days.

Proposed law (C.C.P. Art. 153) changes present law to require a judge who self-recuses to contemporaneously file into the record the order of recusal and the written reasons therefor and to also provide a copy to the judicial administrator of the supreme court.

Present law (C.C.P. Art. 154) requires a motion to recuse to be filed prior to trial or hearing, or if the facts are discovered after the trial or hearing, immediately after the facts are discovered but prior to judgment.

Proposed law (C.C.P. Art. 154) requires a motion to recuse to be filed no later than 30 days after the facts are discovered but in all cases prior to the scheduling of the matter for trial, unless the facts occur or could not have been discovered prior to this deadline, in which case the motion to recuse shall be filed immediately after the occurrence or discovery of the facts.

Proposed law (C.C.P. Art. 154) also provides that if a motion to recuse is not timely filed or fails to set forth a ground for recusal, the judge who is the subject of the motion may deny it without the appointment of another judge or a hearing, provided that the judge provides written reasons for the denial.

Present law (C.C.P. Art. 153) provides for the power and authority of the recused judge and the judge to whom the motion to recuse is assigned to act in the cause.

Proposed law (C.C.P. Art. 155) retains present law.

Present law (C.C.P. Arts. 155-157) permits judges from the same court as the judge who is the subject of the motion to hear both the motion to recuse and the cause if the judge is ultimately recused, and in single judge districts, allows the judge who is the subject of the motion to select a judge from an adjoining district or a lawyer in the judicial district who has the qualifications of a district judge.

Present law (C.C.P. Art. 158) permits a party to apply to the supreme court for the appointment of another judge to try the cause.

Proposed law (C.C.P. Art. 155) provides that in all cases, motions to recuse shall be heard by an ad hoc judge appointed by the supreme court.

Proposed law (C.C.P. Art. 156) further provides that when a district court judge of a court having two or more judges is recused, the cause shall be randomly assigned to another division or section of the court, but in single judge districts, the cause shall be assigned to an ad hoc judge appointed by the supreme court.

Present law (C.C.P. Art. 159) provides for the recusal of a supreme court justice and allows the court to either have the cause argued before and disposed of by the other justices or appoint a judge having the qualifications of a supreme court justice to act for the recused judge.

Proposed law (C.C.P. Art. 157) retains present law but clarifies that the judge who is appointed to act for the recused judge can either be a sitting or retired judge.

Present law (C.C.P. Art. 160) provides for the recusal of a court of appeal judge and allows the motion to recuse to be heard by the other judges on the panel or the remaining judges of the court sitting en banc. Present law further provides that when a court of appeal judge is recused, the court can either have the cause argued before and disposed of by the other judges on the panel or appoint a judge having the qualifications of a court of appeal judge to act for the recused judge.

Proposed law (C.C.P. Art. 158) changes present law to require the motion to recuse to be heard by an ad hoc judge appointed by the supreme court and to provide that when a court

of appeal judge is recused, the court must randomly allot another of its judges to sit on the panel in place of the recused judge.

Present law (C.C.P. Art. 161) provides for the recusal of an ad hoc judge.

Proposed law (C.C.P. Art. 159) retains present law and makes minor technical corrections.

Present law (C.C.P. Art. 4861) provides for the recusal of parish and city court judges and justices of the peace.

Proposed law retains present law and makes minor technical corrections.

Present law (C.C.P. Art. 4862) provides with respect to motions to recuse parish and city court judges and justices of the peace.

Proposed law changes present law to require the motion to recuse to be in writing and makes minor technical corrections.

Present law (C.C.P. Art. 4863) provides that in parish or city courts having more than one judge, both the motion to recuse and the cause shall be tried by another judge of the same court. Present law further provides that in all other cases, the motion to recuse shall be tried by the district court, and if the judge is recused, the district court shall either try the cause or appoint another judge to try the cause.

Proposed law provides that in parish or city courts having more than one judge, the motion to recuse shall be tried by another judge of the same court, and in all other cases, the motion to recuse shall be tried by an ad hoc judge appointed by the supreme court.

Present law (C.C.P. Art. 4864) allows a parish or city court judge who recuses himself to appoint another judge of the same court, if the court has more than one division, or to appoint a judge from an adjoining parish or an attorney who has the qualifications of a parish or city court judge to try the cause. Present law also allows a justice of the peace who recuses himself to appoint another justice of the peace to try the cause.

Proposed law changes present law to provide that when a parish or city court judge recuses himself or is recused, another judge of the same court shall be appointed to try the cause if that court has more than one division, and in all other cases, the cause shall be tried by an ad hoc judge appointed by the supreme court. Proposed law further provides that when a justice of the peace recuses himself, the cause shall be tried by a justice of the peace appointed by the supreme court.

Present law (C.C.P. Art. 4865) provides for the appointment of an ad hoc judge when a parish or city court judge is temporarily unable to preside.

Proposed law retains present law.

Present law (C.C.P. Art. 4866) provides for the power and authority of an ad hoc judge.

Proposed law retains present law and makes minor technical corrections.

(Amends C.C.P. Arts. 151-159, the heading of Chapter 3 of Title I of Book VIII of the C.C.P., and C.C.P. Arts. 4861(heading), 4862, 4863, 4864, 4865(heading), and 4866)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Change the term "responses" to "reasons".