

III. Rights of Parties

Rule 10. Change of Judge or Place of Trial (Refs & Annos)

➔**Rule 10.1. Change of judge for cause**

a. Grounds. In any criminal case prior to the commencement of a hearing or trial the state or any defendant shall be entitled to a change of judge if a fair and impartial hearing or trial cannot be had by reason of the interest or prejudice of the assigned judge.

b. Procedure. Within 10 days after discovery that grounds exist for change of judge, but not after commencement of a hearing or trial, a party may file a motion verified by affidavit of the moving party and alleging specifically the grounds for the change. Except for the commencement of a hearing or trial, no event occurring before the discovery shall constitute a waiver of rights to change of judge for cause. Allegations of interest or prejudice which prevent a fair and impartial hearing or trial may be preserved for appeal.

c. Hearing. Promptly after the filing of the motion, the presiding judge shall provide for a hearing on the matter before a judge other than the judge challenged. The hearing judge shall decide the issues by the preponderance of the evidence and following the hearing, shall return the matter to the presiding judge who shall as quickly as possible assign the action back to the original judge or make a new assignment, depending on the findings of the hearing judge. If a new assignment is to be made it shall be made in accordance with the provisions of this rule.

CREDIT(S)

Amended Dec. 1, 1977, effective Dec. 15, 1977.

COMMENT

Rule 10.1(a). In distinguishing automatic disqualification of a judge from disqualification for cause, the rule follows Civil Rule 42(f). The standard for disqualification is that contained in the 1956 Ariz.Rules of Criminal Procedure, as amended, Rule 196.

Rule 10.1(b). A motion for change of judge must be verified by affidavit of the moving party, as required in the 1956 Ariz.Rules of Criminal Procedure, as amended, Rule 197.

Rule 10.1(c). Ariz. Rules of Civil Procedure 42(f)(2)(D) requires the presiding judge [see definition of "presiding judge" in Rule 1.4(b)] to provide a hearing on a motion for change of judge for cause. If the challenged judge, after reviewing the motion, agrees with the moving party that cause exists and all parties so stipulate the case may be reassigned without hearing following the procedures set forth in Rules 10.5(b) and 10.6.

The hearing judge will issue an order stating his conclusions, copies of which will be forwarded to the presiding judge and to the parties.

HISTORICAL NOTES

Source:

Code 1939, §§ 44-1201 to 44-1203.

Rules Cr.Proc. §§ 248 to 250.

1956 Rules Cr.Proc., Rules 196 to 198.

16A A. R. S. Rules Crim. Proc., Rule 10.1, AZ ST RCRP Rule 10.1

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