

TO:

Rule 28 Distribution
Hon Joseph C Welty
Helen R Davis
Hon D Gregory Sakall

ATTACHMENT¹

RULES OF FAMILY LAW PROCEDURE

Rule 3. Definitions.

(a)-(j) [No change]

(k) Family Law Case. A “family law case” is a court case assigned a unique case number upon the filing of an initial pleading under Rule 23, or two or more cases consolidated under a single case number. The filing of a post-decree petition under Rule 23, including a petition for civil contempt under Rule 92, does not create a separate family law case.

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Rule 6. Change of Judge as a Matter of Right

(a) Definitions.

(1) [No change]

(2) *Presiding judge.* The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the ~~action~~ family law case is pending, or that judge's designee.

(b) Generally. In each ~~action~~ family law case, whether single or consolidated, each party is entitled as a matter of right to a change of judge.

(c) Notice Requirements. A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:

(1) *Written Notice.* A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 43(b). The notice must contain:

(A) [No change]

(B) a statement that:

(i)-(ii) [No change]

(iii) the party has not been granted a change of a judge as a matter of right previously in the ~~action~~ family law case. The notice cannot specify grounds for the change of judge.

(2) [No change]

¹ Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike through~~.

(d) [No change]

(e) Waiver. A party waives the right to change a judge assigned to preside over any proceeding in the ~~action~~ family law case, if:

(1)-(5) [No change]

(f) Actions Remanded from an Appellate Court. In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:

(1) [No change]

(2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the ~~action~~ family law case.

(g) Post-Decree Petitions. In proceedings on a post-decree petition, the right to a change of judge is renewed and no event connected with prior proceedings constitutes a waiver if:

(1) the judge assigned to preside over the post-decree proceeding has not previously ruled on a contested issue or held a hearing or conference in the family law case; and

(2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the family law case.

(g) (h) Procedures on Notice.

(1) *On Proper Notice.* If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the ~~action~~ family law case except to make such temporary orders as are necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the ~~action~~ family law case can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.

(2) *On Improper Notice.* If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the ~~action~~ family law case.

(3) Reassignment.

(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing whether they have agreed on an available judge who is willing to hear the ~~action~~ family law case. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an ~~action~~ family law case is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.

(B) Absent Stipulation. If no judge is agreed on, the presiding judge must promptly reassign the ~~action~~ family law case.