

7A Fed. Proc. Forms § 20:754

Federal Procedural Forms

June 2016 update

Chapter 20. Criminal Procedure

XVI. Trial

B. Before Judge of District Court

3. Challenges to and Disability of Judge

b. Procedural Forms

§ 20:754. Motion—To **disqualify judge**—To avoid question as to impartiality [28 U.S.C.A. §§ 144, 455(a); Fed. R. Crim. P. 47]

Summary Correlation Table References

[Caption, see § 20:13]

[Title of case]

Defendant, [name of defendant], by [his/her] attorney, moves the Honorable [name of judge] to voluntarily disqualify [himself/herself], pursuant to 28 U.S.C.A. § 455(a), from further hearing the proceedings in this proceeding, on the ground that [his/her] impartiality might reasonably be questioned. In support of this motion, defendant states as follows: [Statement of facts].

1. On [date of order], this court ordered defendant's attorney, [name of attorney for defendant], to testify before the Grand Jury, notwithstanding the assertion of an attorney-client relationship, and thereafter cited [name of attorney for defendant] for criminal contempt on [his/her] failure to comply with the order.
2. On [date of order], this court ordered another of defendant's attorneys, [name of attorney for defendant], to testify before the Grand Jury, also notwithstanding the assertion of the attorney-client relationship.
3. On [date of conferring], this court conferred immunity on [name of witness] in order to compel [his/her] testimony as a witness before the Grand Jury.

[Statement of facts].

4. For the reasons stated above, this court has had substantial pretrial exposure to the case and has been called upon to make rulings adverse to the defendant.
5. The interests of justice require the voluntary withdrawal of the Honorable [name of judge] to preserve the appearance of impartiality.

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6. No delay or prejudice will result from a voluntary withdrawal, since pretrial motions have not been filed in this case and there are *[number of judges]* other judges available to sit in this proceeding.

7. This motion is based on the annexed affidavit of *[name of affiant]*, the files and records in the case, and any evidence that may be produced at the hearing.

Dated: *[date of motion]*

\_\_\_\_\_  
*[Name of attorney for defendant]*

Attorney for Defendant

*[Address of attorney for defendant]*

*[Attachment of affidavit, see §§ 20:756 et seq.]*

*[Notice of motion, see § 20:70]*

### Notes

See also Notes to Form § 20:753.

When the sole ground for disqualification is a reasonable question as to the judge's impartiality, a **waiver** may be accepted from the parties to the proceeding, provided it is preceded by a full disclosure on the record of the basis for disqualification. **28 U.S.C.A. § 455(e)**.

In determining whether judge is required to recuse himself or herself, question is whether objective and disinterested observer, knowing and understanding all of facts and circumstances, could reasonably question court's impartiality. *S.E.C. v. Razmilovic*, 728 F.3d 71, 86 Fed. R. Serv. 3d 432 (2d Cir. 2013), opinion amended and superseded, [738 F.3d 14](#), [87 Fed. R. Serv. 3d 328 \(2d Cir. 2013\)](#), as amended, (Nov. 26, 2013) and petition for cert. filed (U.S. Feb. 18, 2014) and withdrawn from bound volume.

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Construction and application of **28 U.S.C.A. sec. 455(a)** providing for disqualification of justice, judge, magistrate, or referee in bankruptcy in any proceeding in which his impartiality might reasonably be questioned, [40 A.L.R. Fed. 954](#)

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