



Is That A New Wig Your Honor? It Looks Smashing!

In Minnesota, you cannot “pick” your Judge for your divorce case, but you can remove the Judge, once, very easily. The rule is [Minn. R. Civ. Procedure 63.03](#) . As is often the case, there are a few specifics that must be followed in order to get a new Judge on your case:

- Must be removed within 10 days of notice of judicial assignment.
- Each Party may only remove once.

Since there is not a jury in Minnesota Divorce cases, the Judge will be the trier of fact. This means the Judge will listen to the facts, to you, your spouse, your witnesses and decide who is telling the truth. This makes the Judge the most important person in your case, you can always appeal a Judge’s decision but that is costly and unlikely to prevail.

How do you decide if you want to remove a judge? This is one of the few areas of a divorce case where I suggest you let your lawyer make the call. Talking to your buddy about how a “Judge screwed him” is really not the best way to decide who will be the person making decision about [alimony, custody](#) and [property division](#) (feel free to read these other blog posts!). You need a good Minnesota divorce lawyer to look at the facts in your case and see if the assigned judge traditionally likes what you want to propose or is not a big fan.

An example is a Judge in Southern Minnesota who says he does not like, and will not order, true joint physical custody. He believes that if the parties can’t agree on when to exchange the kids, then he is not going to make them deal with each other on a near daily basis. If you are seeking joint parenting time, then you will not want this Judge, because it’s clear you won’t get what you want! Your lawyer should be able to say they know the Judge, has seen the judge deal with cases like this in the past and has a good idea about the Judge’s leanings.

Is It Fair To Remove A Divorce Judge?

The rules certainly allow you (or your lawyer) to do this. Most people agree that humans approach life with certain built-in biases. It might be preconceived ideas about a mother’s role in a child’s life,

who the breadwinner should be, or other hot button issues. If you are aware that your Judge has these beliefs, you simply are trying to level the playing field, to get a fair shake so to speak.

How About After My Case Is Over?

No, generally you can't remove the Judge. You're stuck with the Judge who heard your case. There has been some recent discussion about removing judges for post-dissolution cases (usually motions to modify custody, alimony or parenting time) but the Minnesota Court of Appeals did away with this ability in a 2011 case. It is possible to try and remove a Judge based on bias or prejudice, but it is a very hard to do so and one which should not be done without a great deal of thought beforehand. You don't want to accuse the Judge of prejudice, unless he or she is actually prejudiced.

There you go, a common question about changing judges in Minnesota. Any comments or questions feel free to email me at Jkohlmeier @rokolaw.com

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