

## CHAPTER 38

## JUDGES: GENERAL PROVISIONS

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**38.01 Disqualification when judge party; effect of attempted judicial acts.**—Every judge of this state who appears of record as a party to any cause before him or her shall be disqualified to act therein, and shall forthwith enter an order declaring himself or herself to be disqualified in said cause. Any and all attempted judicial acts by any judge so disqualified in a cause, whether done inadvertently or otherwise, shall be utterly null and void and of no effect. No judge shall be disqualified from sitting in the trial of any suit in which any county or municipal corporation is a party by reason that such judge is a resident or taxpayer within such county or municipal corporation.

**History.**—s. 2, ch. 16053, 1933; CGL 1936 Supp. 4155(1); s. 1, ch. 59-43; s. 205, ch. 95-147.

**38.02 Suggestion of disqualification; grounds; proceedings on suggestion and effect.**—In any cause in any of the courts of this state any party to said cause, or any person or corporation interested in the subject matter of such litigation, may at any time before final judgment, if the case be one at law, and at any time before final decree, if the case be one in chancery, show by a suggestion filed in the cause that the judge before whom the cause is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto, or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in said cause by consanguinity or affinity within the third degree, or that said judge is a

material witness for or against one of the parties to said cause, but such an order shall not be subject to collateral attack. Such suggestions shall be filed in the cause within 30 days after the party filing the suggestion, or the party's attorney, or attorneys, of record, or either of them, learned of such disqualification, otherwise the ground, or grounds, of disqualification shall be taken and considered as waived. If the truth of any suggestion appear from the record in said cause, the said judge shall forthwith enter an order reciting the filing of the suggestion, the grounds of his or her disqualification, and declaring himself or herself to be disqualified in said cause. If the truth of any such suggestion does not appear from the record in said cause, the judge may by order entered therein require the filing in the cause of affidavits touching the truth or falsity of such suggestion. If the judge finds that the suggestion is true, he or she shall forthwith enter an order reciting the ground of his or her disqualification and declaring himself or herself disqualified in the cause; if the judge finds that the suggestion is false, he or she shall forthwith enter the order so reciting and declaring himself or herself to be qualified in the cause. Any such order declaring a judge to be disqualified shall not be subject to collateral attack nor shall it be subject to review. Any such order declaring a judge qualified shall not be subject to collateral attack but shall be subject to review by the court having appellate jurisdiction of the cause in connection with which the order was entered.

**History.**—s. 3, ch. 16053, 1933; CGL 1936 Supp. 4155(2); s. 1, ch. 26890, 1951; s. 6, ch. 63-559; s. 206, ch. 95-147.

**38.03 Waiver of grounds of disqualification by parties.**—The parties to any cause, or their attorneys of record, may, by written stipulation filed in the cause, waive any of the grounds of disqualification named in s. 38.02 and such waiver shall be valid and binding as to orders previously entered as well as to future acts of the judge therein; provided, however, that nothing herein shall prevent a judge from disqualifying himself or herself of his or her own motion under s. 38.05.

**History.**—s. 4, ch. 16053, 1933; CGL 1936 Supp. 4155(3); s. 207, ch. 95-147.

**38.04 Sworn statement by judge holding himself or herself qualified.**—Whenever any judge shall enter an order under s. 38.02 declaring qualification to act in said cause, he or she shall contemporaneously therewith file therein a sworn statement that to the best of his or her knowledge and belief the ground or grounds of the disqualification named in the suggestion do not exist.

**History.**—s. 5, ch. 16053, 1933; CGL 1936 Supp. 4155(4); s. 208, ch. 95-147.

**38.05 Disqualification of judge on own motion.**—Any judge may of his or her own motion disqualify himself or herself where, to the judge's own knowledge, any of the grounds for a suggestion of disqualification, as named in s. 38.02, exist. The failure of a judge to so disqualify himself or herself under this section shall not be assignable as error or subject to review.

**History.**—s. 6, ch. 16053, 1933; CGL 1936 Supp. 4155(5); s. 6, ch. 63-559; s. 209, ch. 95-147.

**38.06 Effect of acts where judge fails to disqualify himself or herself.**—In any cause where the grounds for a suggestion of disqualification, as set forth in s. 38.02, appear of record in the cause, but no suggestion of disqualification is filed therein, the orders, judgments, and decrees entered therein by the judge shall be valid. Where, on a suggestion of disqualification the judge enters an order declaring himself or herself qualified, the orders, judgments, and decrees entered therein by the said judge shall not be void and shall not be subject to collateral attack.

**History.**—s. 7, ch. 16053, 1933; CGL 1936 Supp. 4155(6); s. 210, ch. 95-147.

**38.07 Effect of orders entered prior to disqualification; petition for reconsideration.**—When orders have been entered in any cause by a judge prior to the entry of any order of disqualification under s. 38.02 or s. 38.05, any party to the cause may, within 30 days after the filing in the cause of the order of the chief judge of the circuit or the Chief Justice of the Supreme Court, as provided for in s. 38.09, petition the judge so designated for a reconsideration of the orders entered by the disqualified judge prior to the date of the entry of the order of disqualification. Such a petition shall set forth with particularity the matters of law or fact to be relied upon as grounds for the modification or vacation of the orders. Such a petition shall be granted as a matter of right. Upon the granting of the petition, notice of the time and place of the hearing thereon, together with a copy of the petition, shall be mailed by the attorney, or attorneys, of record for the petitioners to the other attorney or attorneys of record, or to the party or parties if they have no attorneys of record. This notice shall be mailed at least 8 days prior to the date fixed by the judge for the hearing. The judge before whom the cause is then pending may, after the hearing, affirm, approve, confirm, reenter, modify, or vacate the orders.

**History.**—s. 8, ch. 16053, 1933; CGL 1936 Supp. 4155(7); s. 10, ch. 63-572; s. 30, ch. 81-259; s. 1, ch. 83-260.

**38.08 Effect of orders where petition for reconsideration not filed.**—If no petition for reconsideration is filed, as provided for in s. 38.07, all orders entered by the disqualified judge prior to the entry of the order of disqualification shall be as binding and valid as if said orders had been duly entered by a qualified judge authorized to act in the cause. The fact that an order was entered by a judge who is subsequently disqualified under s. 38.02 or s. 38.05, shall not be assignable as error subject to review by the appropriate appellate court unless a petition for reconsideration as provided for in s. 38.07, was filed by the party urging the matter as error, and the judge before whom the cause was then pending refused to vacate or modify said order.

**History.**—s. 9, ch. 16053, 1933; CGL 1936 Supp. 4155(8); s. 6, ch. 63-559.

**38.09 Designation of judge to hear cause when order of disqualification entered.**—Every judge of this state shall advise the chief judge of the circuit upon the entry of an order of disqualification. An order of assignment shall then be entered as provided by the Florida Rules of Judicial Administration. In the event any judge is disqualified as herein provided, upon application for any temporary writ of injunction or habeas corpus, the

judge shall immediately enter an order of disqualification, whereupon the cause may be presented to any other judge of a court of the same jurisdiction as the court in which that cause is pending; and it shall be the duty of any such judge to hear and determine such matters until a substitute judge is so designated.

**History.**—s. 10, ch. 16053, 1933; CGL 1936 Supp. 4155(9)(1)s. 11, ch. 63-572; s. 20, ch. 73-333; s. 2, ch. 83-260; s. 211, ch. 95-147.

**38.10 Disqualification of judge for prejudice; application; affidavits; etc.**—Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. However, when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court.

**History.**—s. 4, ch. 7852, 1919; RGS 2674; s. 1, ch. 9276, 1923; CGL 4341; s. 3, ch. 83-260; s. 212, ch. 95-147.

**38.12 Resignation, death, or removal of judges; disposition of pending matters and papers.**—Upon the resignation, death, or impeachment of any judge, all matters pending before that judge shall be heard and determined by the judge's successor, and parties making any motion before such judge shall suffer no detriment by reason of his or her resignation, death, or impeachment. All judges, upon resignation or impeachment, shall file all papers pending before them with the clerk of the court in which the cause is pending; and the executor or administrator of any judge who dies pending any matter before him or her shall file all papers found among the papers of his or her intestate or testator with the said clerk.

**History.**—ss. 1, 2, ch. 3007, 1877; RS 971, 972; GS 1341, 1342; RGS 2529, 2530; CGL 4156, 4157; s. 4, ch. 73-334; s. 1331, ch. 95-147.

**38.13 Judge ad litem; when may be selected in the circuit or county court.**—When, from any cause, the judge of a circuit or county court is disqualified from presiding in any civil case, the parties may agree upon an

attorney at law, which agreement shall be entered upon the record of said cause, who shall be judge ad litem and shall preside over the trial of, and make orders in, said case as if he or she were the judge of the court. Nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be.

**History.**—s. 1, ch. 3713, 1887; RS 974; GS 1344; RGS 2533; CGL 4160; s. 7, ch. 22858, 1945; s. 4, ch. 73-334; s. 213, ch. 95-147.

#### **38.14 Voluntary retirement of circuit judges.—**

Whenever any circuit judge has elected to take the benefits of this law in accordance with the terms hereof, and has served as such judge for 12 years or more or who is serving the 12th continuous year as such judge, continuously or otherwise, and has attained the age of 60 years or more, or has served as such judge for 20 years or more, continuously or otherwise, such judge may voluntarily resign and retire from office, and upon such retirement shall be paid, during the remainder of his or her natural life, on his or her own monthly requisition, from the circuit judges' retirement trust fund hereinafter established, two-thirds of the compensation being paid to such judge at the time of resignation and retirement; and there is hereby appropriated annually out of said circuit judges' retirement trust fund sufficient money to meet the requirements of this section.

**History.**—ss. 1, 3, ch. 19000, 1939; CGL 1940 Supp. 4779 (1), (3); s. 7, ch. 22000, 1943; s. 2, ch. 61-119; s. 214, ch. 95-147.

#### **38.15 Retirement of disabled judges.—**

(1) Whenever any circuit judge has elected to take the benefits of this law in accordance with the terms hereof and has served as such circuit judge for 10 years or more, continuously or otherwise, and shall, while holding such office, become totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service as such judge, such judge may voluntarily resign and retire from office, and upon such retirement shall be paid, during the remainder of his or her natural life, on his or her own monthly requisition, from the Circuit Judges' Retirement Trust Fund hereinafter established one-half of the compensation being paid to such judge at the time of resignation and retirement; and there is hereby appropriated annually out of said Circuit Judges' Retirement Trust Fund sufficient money to meet the requirements of this section.

(2) No such judge shall be permitted to retire and resign under the provisions of this section until examined by a duly qualified physician or surgeon, or board of physicians or surgeons, to be selected by the Governor for that purpose, and found to be disabled in the degree and in the manner specified herein.

**History.**—s. 2, ch. 19000, 1939; CGL 1940 Supp. 4779(2); s. 7, ch. 22000, 1943; s. 2, ch. 61-119; s. 215, ch. 95-147.

#### **38.16 Retired judge prohibited from practicing law.**

No judge drawing retirement compensation as provided in ss. 38.14-38.17 shall engage in the practice of law.

**History.**—s. 4, ch. 19000, 1939; CGL 1940 Supp. 4779(4).

#### **38.17 Deductions from salary; election.—**

Two percent shall be deducted from each installment of the salary of each circuit judge heretofore electing to come under the retirement provision of chapter 19000, Acts of 1939, as provided in s. 5 thereof, and said amount so deducted shall be deposited in the special fund established in the State Treasury, which is and shall be known as the "Circuit Judges' Retirement Trust Fund." Any person who may hereafter qualify as circuit judge shall be entitled to the benefits of these retirement provisions upon giving notice to the State Comptroller and the State Treasurer within 90 days after taking office, and, after the giving of such notice, so long as such circuit judge shall hold office, 2 percent shall be deducted from each installment of salary of such circuit judge and the said amount so deducted shall be deposited into said Circuit Judges' Retirement Trust Fund. The word "salary" shall be deemed to mean the total salary received by any circuit judge including therein all amounts paid by any county of this state.

**History.**—s. 5, ch. 19000, 1939; CGL 1940 Supp. 4779(5); s. 2, ch. 61-119.

#### **38.19 Appropriation.—**

There is hereby appropriated annually and shall be paid into said Circuit Judges' Retirement Trust Fund out of any funds in the State Treasury, not otherwise appropriated, sufficient moneys to meet the requirements of these retirement provisions, taking into account the sum paid into the Circuit Judges' Retirement Trust Fund aforesaid.

**History.**—s. 7, ch. 19000, 1939; CGL 1940 Supp. 4779(7); s. 2, ch. 61-119.

#### **38.22 Power to punish contempts.—**

Every court may punish contempts against it whether such contempts be direct, indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact.

**History.**—s. 1, Nov. 23, 1828; RS 975; GS 1345; RGS 2534; CGL 4161; s. 1, ch. 23004, 1945; s. 4, ch. 73-334.

#### **38.23 Contempts defined.—**

A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt.

**History.**—s. 2, Nov. 23, 1828; RS 976; GS 1346; RGS 2535; CGL 4162.