

**SUMMARY OF REQUIREMENTS
FOR AN INVOLUNTARY RECUSAL IN A CIVIL CASE**

	Recusal Steps	Case Citations
1.	<p>Voluntary Recusal. Judge Carter may voluntarily recuse himself if he believes that there is a basis for doing so under La. C.C.P. Article 151, the Code of Judicial Conduct, or other grounds.</p>	
2.	<p>Presumption of Impartiality. Judge Carter's assessment of his own fairness is given great deference. If Judge Carter believes that he can be fair, he begins with a presumption of impartiality, a high burden to overcome.</p>	<p>"A judge is presumed to be impartial. The party seeking to recuse cannot merely allege lack of impartiality; he must present some factual basis. And bias, prejudice, or personal interest must be of a substantial nature and based on more than conclusory allegations."</p> <p><i>McCoy vs. Calamia</i>, 653 So.2d 763 (La.App. 3 Cir. 4/5/95); <i>Pierce vs. Charity Hospital</i>, 550 So.2d 211, 213 (La.App. 4 Cir. 1989); <i>Couvillion vs. Couvillion</i>, 769 So.2d 747 (L.App. 5 Cir. 9/26/00); <i>Tamporello vs. State Farm Mut. Auto Insu. Co.</i>, 665 So.2d 503, 506; <i>Use vs. Use, et al.</i>, 654 So.2d 1355 (La.App. 1 Cir. 4/7/95).</p>
3.	<p>Article 151 Exclusive Remedy. If Judge Carter finds no grounds for recusal, the Criminal Division may seek an involuntary recusal only under the narrow statutory grounds of La. C.C.P. Article 151 and may not utilize the standards of the Code of Criminal Procedure or any judicial canons.</p>	<p>"The basis for plaintiffs' motion to recuse is not among the statutory grounds for recusal under LSA-C.C.P. art 151. The list of grounds for recusal is exclusive, not illustrative, and there must be a statutory ground for recusing a judge."</p> <p>"[a] mere appearance of impropriety, not statutorily listed in LSA-C.C.P. art 151, cannot be a basis for recusal." <i>Chauvin vs. Sisters of Mercy Health System, et al.</i>, 818 So.2d 833 (La.App. 4 Cir. 5/8/02) at 835.</p> <p><i>O'Neill</i> notes that the standard for involuntary recusal under Article 151 is far more difficult than it is under La.C.Cr.P. Article 671. Indeed, a judge will likely run afoul of disciplinary rules long before he can be forced to be recused under Article 151.</p>

<p>4.</p>	<p>The Criminal Division must prove bias specific to Covington under Article 151. Article 151 mandates that bias be proven as to each case and each attorney individually. Thus, the Criminal Division must show bias against McNeese State University, the University of Louisiana System, Adam Ortego, Mike Veron, or Rock Palermo (the parties and attorneys in <i>Covington</i>).</p>	<p>"Each case must be examined on its own facts, therefore, to determine whether there should be a recusation." <i>Wm. T. Burton Industries, Inc. vs. Ellis Busby</i>, 348 So.2d 1328 (La. 3 Cir. 1977), <i>citing State Department of Highways vs. McDonald</i>, 329 So.2d 898 (La.App. 2 Cir. 1976).</p> <p>La.C.C.P. Article 151 (B)(4) requires that a judge must be biased against the parties or attorneys in a particular cause: ". . . biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys . . . "</p>
<p>5.</p>	<p>Bias is not imputed to all lawyers in a firm. As noted in step 4, bias must be particularized to the attorneys making appearances in the case, not to all attorneys within the firm.</p>	<p>A judge was privately represented by another lawyer in the same firm as a lawyer appearing before him:</p> <p>"[i]n this case the judge did not employ an attorney representing any of the parties so there was no basis under La. Code Civ. P. art. 151 for even a permissive recusal of Judge Hebert." <i>Richard vs. Wijayasuriya, et al.</i>, 645 So.2d 708 (La. App. 3 Cir. 10/5/94).</p> <p>Again, Article 151 allows recusal only after a showing of bias as to the parties or attorneys actively representing the parties in a cause.</p>
<p>6.</p>	<p>The Criminal Division must prove actual bias, not the appearance of bias. The Criminal Division must show that Judge Carter has an actual bias against any of the parties or attorneys in <i>Covington</i>.</p>	<p>"[a] mere appearance of impropriety, not statutorily listed in LSA-C.C.P. art 151, cannot be a basis for recusal." <i>Chauvin, supra</i>.</p> <p>"In this instance, although the comments made by the judge during testimony might be construed to appear biased, we conclude that it does not rise to the level of showing actual bias." <i>Brown vs. Brown</i>, 877 So.2d 1228, 1238 (La.App. 2 Cir. 07/21/04)</p>

<p>7.</p>	<p>The Criminal Division must prove that the alleged bias has or will affect Judge Carter's rulings in Covington.</p> <p>The Criminal Division has the burden of using the nine-year record in <i>Covington</i> to show that Judge Carter's alleged bias affected his rulings or will likely affect his rulings in <i>Covington</i>.</p>	<p>"Moreover, even if Plaintiff were able to show that Judge Medley was harboring a secret conflict of interest with regard to her attorney, there is nothing in the record indicating that Judge Medley's alleged bias affected the outcome of trial." <i>Pyle vs. Weaver, et al.</i>, 958 So.2d 753 (La.App. 4 Cir. 5/16/07).</p> <p>"A review of the trial transcript, the record of pretrial proceedings, and the trial judge's oral reasons for judgment indicate the trial judge comported himself with fairness and diligence toward all the parties throughout long and tedious litigation. Recusal based on this single comment would only have delayed the litigation further." <i>Use vs. Use, et al.</i>, 654 So.2d 1355 (La.App. 1 Cir. 4/7/95).</p>
<p>8.</p>	<p>The Criminal Division must prove that Judge Carter's statements are untrue, unjustified, and severe enough to show actual bias toward a party or attorney making an appearance in Covington and severe enough to affect his rulings in Covington.</p> <p>Judges are permitted to comment on the conduct of attorneys and witnesses. These rights are protected under the First Amendment. Before the Criminal Division may even begin to allege bias, it must first prove that Judge Carter's statements were both untrue and unjustified and would actually affect his rulings in <i>Covington</i>.</p>	<p>After a judge made numerous sarcastic comments about a party's personal life, dating life, poverty, and parenting skills, the Second Circuit held:</p> <p>"In this instance, although the comments made by the judge during testimony might be construed to appear biased, we conclude that it does not rise to the level of showing actual bias. Regarding the statements made during the court's oral reasons for judgment, the statements represent impressions and conclusions drawn from the trial judge's participation as presiding judge in the trial of the defendant. Where the alleged bias or prejudice stems from testimony and evidence presented in the proceedings, the bias or prejudice is not of an extrajudicial nature as would warrant recusal." <i>Brown vs. Brown</i>, 877 So.2d 1228 (La.App. 2 Cir. 07/21/04), <i>citing State vs. Williams</i>, 601 So.2d 1374 (La. 1992).</p> <p>In <i>Sons vs. Delaune, et al.</i>, 634 So.2d 1212 (La.1st Cir. 1993), a judge stated on the record, "I do not like Mr. Sons." Mr. Sons, the plaintiff in a personal injury lawsuit, filed a motion to recuse the trial judge, alleging that this showed bias against him. The trial judge did not dispute that he made a statement to that effect. However, the judge claimed that he could, nevertheless, be impartial in the case. The First Circuit agreed.</p>

<p>9.</p>	<p>The Criminal Division's recusal is too late in <i>Covington</i> because judgment was signed 27 months ago. The Criminal Division was required to file its written motion for recusal immediately after learning of facts that they believed would support recusal. At least two years ago, the Criminal Division was aware of these facts, yet they are just filing their recusal more than two years after judgment was signed in <i>Covington</i>, in violation of the Code of Civil Procedure.</p>	<p>"A party desiring to recuse a judge of a district court shall file a written motion therefor assigning the ground for recusation. This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the ground for recusation thereafter, in which event it shall be filed immediately after these facts are discovered, but prior to judgment." <i>O'Neill vs. Thibodeaux, et al.</i>, 709 So.2d 962 (La.App. 3 Cir. 03/06/98).</p>
<p>10.</p>	<p>The Criminal Division attorneys must be attorneys of record in <i>Covington</i> to have standing to forcefully recuse the trial judge. The attorneys filing the instant motion in <i>Covington</i> are not attorneys of record and have never made an appearance in <i>Covington</i>. Thus, they have no standing to attempt to involuntarily recuse the trial judge under La. C.C.P. Article 863.</p>	<p>La. C.C.P. Article 863 requires that, "every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated."</p>

**CORRECTION OF CRIMINAL DIVISION INACCURATE STATEMENTS OF LAW
REGARDING THE RECUSAL HEARING IN *COVINGTON VS. MCNEESE***

Criminal Division's Incorrect Statement of Law	Correct Statement of Law	Case Citations
A judge may be involuntarily recused based on the appearance of bias.	A judge may only be recused under the specific grounds provided in La. C.C.P. Article 151. Each of these grounds requires a showing of actual bias.	<p>"The basis for plaintiffs' motion to recuse is not among the statutory grounds for recusal under LSA-C.C.P. art 151. The list of grounds for recusal is exclusive, not illustrative, and there must be a statutory ground for recusing a judge."</p> <p>"[a] mere appearance of impropriety, not statutorily listed in LSA-C.C.P. art 151, cannot be a basis for recusal." <i>Chauvin vs. Sisters of Mercy Health System, et al.</i>, 818 So.2d 833 (La.App. 4 Cir. 5/8/02) at 835.</p>
A showing of bias against the "AG's Office" is a showing of bias against all assistant attorneys general.	Article 151 and the cases interpreting it require a specific showing of bias as to a party or attorney making an appearance in <i>Covington</i> .	A judge may be involuntarily recused only if he is shown to be ". . . biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys . . ." La. C.C.P. Article 151.
A judge may be recused in multiple cases without evidence of specific bias as to each case.	Article 151 and the cases interpreting it require a specific showing of bias as to a party or attorney making an appearance in <i>Covington</i> .	"Each case must be examined on its own facts, therefore, to determine whether there should be a recusation." <i>Wm. T. Burton Industries, Inc. vs. Ellis Busby</i> , 348 So.2d 1328 (La. 3 Cir. 1977), citing <i>State Department of Highways vs. McDonald</i> , 329 So.2d 898

		<p>(La.App. 2 Cir. 1976).</p> <p>A judge may be involuntarily recused only if he is shown to be ". . . biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys . . ." La. C.C.P. Article 151.</p>
<p>The Rules of Judicial Conduct and ABA Canons have the force of law.</p>	<p>The Rules of Judicial Conduct and ABA Canons have the force of law with respect to disciplinary hearings and may help a judge decide whether to voluntarily recuse himself.</p> <p>However, only La. C.C.P. Article 151 governs involuntary recusals, and the Rules of Judicial Conduct and ABA Canons cannot be cited as grounds for the involuntary recusal of a judge.</p>	<p>"The basis for plaintiffs' motion to recuse is not among the statutory grounds for recusal under LSA-C.C.P. art 151. The list of grounds for recusal is exclusive, not illustrative, and there must be a statutory ground for recusing a judge."</p> <p>"[a] mere appearance of impropriety, not statutorily listed in LSA-C.C.P. art 151, cannot be a basis for recusal." <i>Chauvin vs. Sisters of Mercy Health System, et al.</i>, 818 So.2d 833 (La.App. 4 Cir. 5/8/02) at 835.</p> <p><i>O'Neill</i> notes that the standard for involuntary recusal under Article 151 is far more difficult than it is under La.C.Cr.P. Article 671. Indeed, a judge will likely run afoul of disciplinary rules long before he can be forced to be recused under Article 151.</p>