

to the same suggestion of disability.<sup>6</sup>

**§ 402 Exceptions to disqualification; rule of necessity—  
Inherent powers doctrine**

**Research References**

West's Key Number Digest, Judges ⇨53  
Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If Case Cannot Be Heard Otherwise, 27 A.L.R.6th 403

There is authority that under the inherent powers doctrine, a court need not be disqualified as a party to a proceeding where such disqualification would result in the expense and delay of proceedings in another court.<sup>1</sup>

**§ 403 Disqualification as causing loss of jurisdiction**

**Research References**

West's Key Number Digest, Judges ⇨39  
Disqualification of judge by state, in criminal case, for bias or prejudice, 68 A.L.R.3d 509

A judge disqualified for any of the statutory grounds, or a court of which such a judge is a member, is without jurisdiction, and all proceedings had before such a judge or court are void.<sup>1</sup> Thus, a presiding judge's statutory disqualification from a defendant's case renders the defendant's arraignment and plea void.<sup>2</sup> Prejudice or bias unconnected with the statutory grounds for disqualification does not,

<sup>6</sup>Morgenthau v. Cooke, 56 N.Y.2d 24, 451 N.Y.S.2d 17, 436 N.E.2d 467 (1982).

**[Section 402]**

<sup>1</sup>Matter of Spike, 99 Misc. 2d 178, 415 N.Y.S.2d 762 (County Ct. 1979) (holding that the county court could order the sheriff to continue to provide security services to the court, despite a directive by the county legislature to the contrary in connection with a disagreement between the legislature and the Office of Court Administration concerning the terms of a written agreement for state reimbursement to the county for court security services, because the inherent powers doctrine contemplates the authority reasonably required to enable the

court to perform its judicial functions efficiently).

**[Section 403]**

<sup>1</sup>People v. Alteri, 47 A.D.3d 1070, 850 N.Y.S.2d 258 (3d Dep't 2008); People v. Connor, 142 N.Y. 130, 36 N.E. 807 (1894); In re Thoms' Trust, 24 A.D.2d 536, 261 N.Y.S.2d 304 (4th Dep't 1965); Fitzgerald v. Wells, 9 A.D.2d 812, 192 N.Y.S.2d 719 (3d Dep't 1959); Di Lodovico v. Dotson, 1 Misc. 2d 505, 151 N.Y.S.2d 469 (County Ct. 1956).

As to the grounds for disqualification, see §§ 410 to 431.

<sup>2</sup>People v. Golston, 13 A.D.3d 887, 787 N.Y.S.2d 185 (3d Dep't 2004).

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however, deprive a judge of jurisdiction.<sup>3</sup>

A disqualified judge is even incompetent to make an order in the case setting aside his or her own void proceedings.<sup>4</sup> However, it is not necessary that a judgment rendered under such circumstances be set aside by an appellate court.<sup>5</sup> Such disposition may properly be made by the court originally entertaining the proceeding, provided, of course, that the disqualified judge does not sit therein.<sup>6</sup>

**§ 404 Waiver; remittal of disqualification**

**Research References**

West's Key Number Digest, Judges ⇨53, 54  
Waiver or loss of right to disqualify judge by participation in proceedings—modern state criminal cases, 27 A.L.R.4th 597  
Waiver or loss of right to disqualify judge by participation in proceedings—modern state civil cases, 24 A.L.R.4th 870  
Time for asserting disqualification of judge, and waiver of disqualification, 73 A.L.R.2d 1238  
Am. Jur. Pleading and Practice Forms, Judges §§ 61 (Notice—Waiver of judge's disqualification), 62 (Stipulation—Waiver of judge's disqualification)

Under certain circumstances, a judge disqualified under the Rules of the Chief Administrator governing judicial conduct may disclose on the record the basis of the judge's disqualification, following which disclosure the judge may participate in the proceeding if the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial

<sup>3</sup>Fitzgerald v. Wells, 9 A.D.2d 812, 192 N.Y.S.2d 719 (3d Dep't 1959).

The trial court's determination denying the plaintiff's motion to strike the defendant's answer did not become null and void when the trial judge thereafter recused himself. Ulrich v. Estate of Zdunkiewicz, 8 A.D.3d 1014, 778 N.Y.S.2d 582 (4th Dep't 2004).

<sup>4</sup>People v. Whitridge, 144 A.D. 493, 129 N.Y.S. 300 (1st Dep't 1911).

<sup>5</sup>Elmira Realty Co. v. Gibson, 103 A.D. 140, 92 N.Y.S. 913 (3d Dep't 1905) (noting that if an appeal is taken from the judgment rendered void by virtue of the disqualification of the judge, it is better practice for the appellate court to

dismiss the appeal and remit the parties to a motion in the court below, to rid themselves of the void judgment in that court, than to grant a reversal, particularly where the lack of jurisdiction because of the disqualification does not appear upon the record upon appeal).

<sup>6</sup>Oakley v. Aspinwall, 3 N.Y. 547, 1850 WL 5357 (1850); People ex rel. Union Bag & Paper Corp. v. Gilbert, 143 Misc. 287, 256 N.Y.S. 442 (Sup 1932), aff'd, 236 A.D. 873, 260 N.Y.S. 939 (3d Dep't 1932); Matthews v. Noble, 25 Misc. 674, 55 N.Y.S. 190 (Sup 1898), judgment modified on other grounds, 39 A.D. 655, 59 N.Y.S. 1110 (4th Dep't 1899).