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September 21, 2016

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IN RE: RULE 10B RULES OF THE TENNESSEE
SUPREME COURT
NO. ADM2016-01256

Dear Jim:

Attached please find an original and one copy of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur
Executive Director

cc: Jason Long, President, Tennessee Bar Association
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FILED

IN THE SUPREME COURT OF TENNESSEE 2016 SEP 21 AM 10:58
AT NASHVILLE

APPELLATE COURT CLERK
NASHVILLE

**IN RE PROPOSED AMENDMENTS TO RULE 10B,
RULES OF THE TENNESSEE SUPREME COURT**

No ADM2016-01256

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, Jason H. Long; Chair of its Committee on the Judiciary, Matthew J. Sweeney; General Counsel, Edward D. Lanquist; and Executive Director, Allan F. Ramsaur, files this comment supporting the proposed changes making the review time periods jurisdictional and supporting continuation of independent review of denials of motions seeking recusal, disqualification or determination of statutory or constitutional incompetence.

BACKGROUND

By order entered June 23, 2016, the Tennessee Supreme Court announced that it was considering changes to Tenn. Sup. Ct. R. 10B to address procedural issues which have arisen in the administration of the Rule. The TBA Standing Committee on the Judiciary was asked to review and make recommendations for TBA to the comment on the proposed changes. That distinguished Committee,

made up of lawyers and judges, met twice to consider the proposed amendments and made recommendations to the TBA Executive Committee which authorized the filing of this comment.

In 2010, at the invitation of the Tennessee Supreme Court, the TBA undertook, through its Task Force on Judicial Conduct Rules, a thorough examination of the ABA's Model Rules of Judicial Conduct. In undertaking that review, a principal focus of the discussion became rules addressing recusal, disqualification, and determinations of incompetence. That Task Force not only undertook an in-depth review of various substantive and procedural rules adopted in other states but also vetted those proposals with the Tennessee Judicial Conference and the bench and bar, at large, and proposed substantive and procedural changes. The overriding focus of the discussion was on establishment of both substantive and procedural rules which in fact and in perception enhance the public trust and confidence in impartiality and fairness in the justice system. Ultimately the substantive changes were adopted by this Court as a revised Tenn. Sup. Ct. R. 10.

The administration of the procedural rules were referred to the Advisory Commission on Rules on Procedure and Evidence. The TBA participated in the thorough examination which that advisory body undertook in reviewing the proposed Tenn. Sup. Ct. R. 10B.

The present rule is a result of that extensive review.

1. THE COURT SHOULD ADOPT THE AMENDMENTS WHICH WOULD MAKE THE TIME PERIODS FOR FILING VARIOUS DOCUMENTS JURISDICTIONAL AND ADOPT A UNIFORM PERIOD OF TWENTY-ONE (21) DAYS FOR THE FILING OF SUCH DOCUMENTS.

At present it is unclear whether the time periods for appeal of the denial of a review, disqualification or an incompetence motion are jurisdictional. Throughout the rule as proposed, it is made explicit that the time period for filing of documents is jurisdictional. New provisions in Tenn. Sup. Ct. R. 10B § 2.08 and Tenn. Sup. Ct. R. 10B § 3.04 make this explicit. In addition, the Court proposes to make all of the timelines for such appeals twenty-one (21) days.

These changes should clarify and prove to be beneficial in the administration of the process for determining independent review of decisions denying a motion for recusal, disqualification, or constitutional incompetence and should be adopted.

2. THE COURT SHOULD ADOPT THE PROPOSED AMENDMENTS TO TENNESSEE SUPREME COURT RULE 10B SECTION 3.02(A) WHICH PROVIDE THAT THE REVIEW OF THE DENIAL OF A MOTION TO RECUSAL, DISQUALIFICATION, OR DETERMINATION OF CONSTITUTIONAL OR STATUTORY INCOMPETENCE BE REVIEWED BY THREE (3) OTHER JUDGES OF THE COURT RATHER THAN JUST OF THE SECTION.

This change in the rule makes both practical and theoretical sense. In the past, our intermediate courts have generally met by section Increasingly geographic interchange means our intermediate appellate court acts more as a

single court rather than three separate sections. The review by any three judges of a motion to deny a recusal of a single judge is thus reasonable and advisable.

3. THE RULE SHOULD CONTINUE TO PROVIDE FOR REVIEW OF MOTIONS TO DISQUALIFY MORE THAN ONE JUDGE OF THE INTERMEDIATE APPELLATE COURT BY OTHER MEMBERS OF THE COURT.

As noted above, the proposed amendments clarify that the three judges from any section of the court can review a denial of a motion to disqualify, recuse, or determine statutory or constitutional incompetence. A review by the remaining members of that intermediate appellate court is the most practical and workable solution and provides a collegial prospective. The attached “clean” version of the proposed rule found as Exhibit B reflects the rule as the Court proposed it with this change in policy. If there are remaining judges that are not subject to the motion for multiple judges to recuse, disqualify, or determine incompetence, such judges should to make that determination. As drafted, the Tenn. Sup. Ct. R. 10B § 3.02(b) would provide if there are not three judges available in the appellate court that the matter would then go on to being heard by the Tennessee Supreme Court as provided in Tenn. Sup. Ct. R. 10B § 3.02(c).

4. THE RULE SHOULD CONTINUE TO PROVIDE FOR REVIEW OF DENIAL OF MOTIONS TO RECUSE, DISQUALIFY, OR DETERMINE INCOMPETENCE OF SUPREME COURT JUSTICES EVEN WHEN MULTIPLE JUSTICES, BUT LESS THAN ALL, ARE SUBJECT TO THE MOTION.

At present the rule provides, at Tenn. Sup. Ct. R. 10B § 3.03, that review of a motion to determine review of a denial of a motion seeking recusal, disqualification, or declaration of the statutory or constitutional incompetence of one or more justices be heard by by the remaining justices.

Fashioning the standards and procedure for the Supreme Court on these issues is perhaps the thorniest question presented, but the most important for maintaining public trust and confidence in the justice system. It is clear that sometimes litigants might seek recusal of multiple members of the Supreme Court. Simply allowing denial of those decisions and not permitting further review will inevitably lead to a public perception that is not healthy. The proposed rule as recommended by the TBA would permit review of any denial of decision by the remaining justices or a single justice.

In reviewing rules dealing with this procedure in other jurisdictions the only other proposal beyond those employed in some Western states which really amount to a preemptory right to have a judge recuse is one in which the decisions of the Supreme Court would be reviewed by other appellate courts. This approach was rejected as impolitic and inadvisable.

CONCLUSION

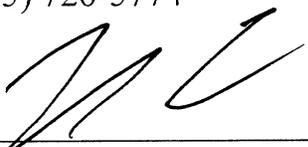
For the forgoing reasons the TBA urges adoption of several of the procedural and housekeeping changes made in the proposed rule but urges the

Court to maintain the most transparent, practical, and workable provisions to enhance public trust and confidence by adopting various recommended changes.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "C" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

/s/ by permission
Allan F. Ramsaur

EXHIBIT B

Rule 10B. Disqualification or Recusal of a Judge; Filing and Disposition of Motions and Appeal

The procedures set out in this rule shall be employed to determine whether a judge should preside over a case.

Section 1. Motion Seeking Disqualification or Recusal of Trial Judge of Court of Record.

1.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge of a court of record, or a judge acting as a court of record, shall do so by a timely filed written motion. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to file a pro se motion under this rule.

1.02. While the motion is pending, the judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken.

1.03. Upon the filing of a motion pursuant to section 1.01, the judge shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion.

1.04. A judge who recuses himself or herself, whether on the judge's own initiative or on motion of a party, shall not participate in selecting his or her successor, absent the agreement of all parties. With the agreement of all parties to the case, the judge may seek an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(1). Otherwise, the presiding judge of the court shall effect an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(2) or (3). If an interchange cannot be effected, or if the presiding judge is the recused judge, the presiding judge shall request the designation of a judge by the Chief Justice, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(4).

Section 2. Appeal From Trial Court's Denial of Disqualification or Recusal Motion.

2.01. If the trial court judge enters an order denying a motion for the judge's disqualification or recusal, or for determination of constitutional or statutory incompetence, the trial court's ruling either can be appealed in an accelerated interlocutory appeal as of right, as provided in this Section 2, or the ruling can be raised as an issue in an appeal as of right, see Tenn. R. App. P. 3, following the entry of the trial court's judgment. These two alternative

methods of appeal—the accelerated interlocutory appeal or an appeal as of right following entry of the trial court’s judgment—shall be the exclusive methods for seeking appellate review of any issue concerning the trial court’s denial of a motion filed pursuant to this rule. In both types of appeals authorized in this section, the trial court’s ruling on the motion for disqualification or recusal shall be reviewed by the appellate court under a de novo standard of review, and any order or opinion issued by the appellate court should state with particularity the basis for its ruling on the recusal issue.

2.02. To effect an accelerated interlocutory appeal as of right from the denial of a motion for disqualification or recusal of the trial court judge, a petition for recusal appeal shall be filed in the appropriate appellate court within twenty-one days of the trial court’s entry of the order. In civil cases, a bond for costs as required by Tenn. R. App. P. 6 shall be filed with the petition. A copy of the petition shall be promptly served on all other parties, and a copy also shall be promptly filed with the trial court clerk. For purposes of this section, “appropriate appellate court” means the appellate court to which an appeal would lie from the trial court’s final judgment in the case.

2.03. The petition for recusal appeal shall contain:

- (a) A statement of the issues presented for review;
- (b) A statement of the facts, setting forth the facts relevant to the issues presented for review;
- (c) An argument, setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities; and
- (d) A short conclusion, stating the precise relief sought.

The petition shall be accompanied by a copy of the motion and all supporting documents filed in the trial court, a copy of the trial court’s order or opinion ruling on the motion, and a copy of any other parts of the trial court record necessary for determination of the appeal.

2.04. The filing of a petition for recusal appeal does not automatically stay the trial court proceeding. However, either the trial court or the appellate court may grant a stay on motion of a party or on the court’s own initiative, pending the appellate court’s determination of the appeal.

2.05. If the appellate court, based upon its review of the petition for recusal appeal and supporting documents, determines that no answer from the other parties is needed, the court may act summarily on the appeal. Otherwise, the appellate court shall order that an answer to the petition be filed by the other parties. The court, in its discretion, also may order further briefing by the parties within the time period set by the court.

2.06. An accelerated interlocutory appeal shall be decided by the appellate court on an expedited basis. The appellate court’s decision, in the court’s discretion, may be made without

oral argument. Tenn. R. App. P. 39 (“Rehearing”) does not apply to the appellate court’s decision on an accelerated interlocutory appeal, and a petition for rehearing pursuant to that rule is therefore not permitted in such appeals.

2.07. In an accelerated interlocutory appeal decided by either the Court of Appeals or the Court of Criminal Appeals, a party may seek the Supreme Court’s review of the intermediate court’s decision by filing an accelerated application for permission to appeal. The application shall be filed in the Supreme Court within twenty-one days of the filing date of the intermediate court’s order or opinion. The accelerated application shall include an appendix containing: (a) copies of the petition and supporting documents filed in the intermediate appellate court; (b) copies of any answer(s) filed by order of the intermediate appellate court; and (c) a copy of the order or opinion filed by the intermediate appellate court. A copy of the accelerated application for permission to appeal shall be promptly served on all other parties. In civil cases in which the party seeking the Supreme Court’s review is not the party that filed the accelerated interlocutory appeal in the intermediate court, the party filing the accelerated application shall file with the application a bond for costs as required by Tenn. R. App. P. 6.

If the Supreme Court, based upon its review of the accelerated application for permission to appeal, determines that no answer from the other parties is needed, the Court may act summarily on the accelerated application. Otherwise, the Court shall order that an answer to the application be filed by the other parties. The Court, in its discretion, also may order further briefing by the parties within the time period set by the Court. The Supreme Court shall decide the appeal on an expedited basis upon a de novo standard of review and, in its discretion, may decide the appeal without oral argument.

The accelerated application for permission to appeal authorized by this section 2.07 is the exclusive method for seeking the Supreme Court’s review of the intermediate court’s ruling on an accelerated interlocutory appeal filed under section 2. The provisions of Tenn. R. App. P. 11 therefore do not apply to such appeals.

2.08. The time periods for filing a petition for recusal appeal pursuant to section 2.02 and for filing an accelerated application for permission to appeal to the Supreme Court pursuant to section 2.07 are jurisdictional and cannot be extended by the court. The computation of time for filing the foregoing matters under section 2 shall be governed by Tenn. R. App. P. 21(a).

Section 3. Motion Seeking Disqualification or Recusal of Appellate Judge or Justice.

3.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge or justice of an appellate court shall do so by a timely filed written motion. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials; the motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge or justice and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to file a pro se motion under this rule.

3.02. (a) Upon the filing of a motion seeking disqualification, recusal, or determination of constitutional or statutory incompetence of an intermediate appellate judge, the judge in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion. If the judge denies the motion, the movant, within twenty-one days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate court upon a de novo standard of review.

(b) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of more than one judge of the intermediate appellate court, and if the motion is denied by the judges in question, a motion for court review shall be available and shall be determined promptly by the other judges of the intermediate appellate court. If a motion seeks disqualification, recusal, or determination of constitutional or statutory incompetence of more than one judge of the intermediate appellate court and there are not three judges available to rule on the motion, then the ruling on the motion is not subject to further review by the other judges of the appellate court but may be appealed to the Supreme Court pursuant to section 3.02(c).

(c) If the motion for court review is denied, or if a motion for review is not available pursuant to section 3.02(b), an accelerated appeal as of right lies to the Tennessee Supreme Court, which shall expeditiously decide the appeal based upon the petition and other papers filed in the intermediate appellate court. The appeal to the Supreme Court shall be titled “recusal appeal from the [Court of Appeals or Court of Criminal Appeals]” and shall be filed within twenty-one days of the intermediate appellate court’s order denying the motion for court review or, if a motion for review was not available pursuant to section 3.02(b), within twenty-one days of the order denying the motion seeking disqualification or recusal of the appellate judges in question.

3.03. (a) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of one or more Supreme Court justices, the justice in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the justice shall state in writing the grounds upon which he or she denies the motion. If the justice denies the motion, the movant, within twenty-one days of entry of the order, may file a motion for court review, which shall be determined promptly by the remaining justices upon a de novo standard of review.

(b) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of all of the justices of the Supreme Court, and if the motion is denied by the justices in question, no motion for court review shall be available pursuant to section 3.03(a).

3.04. The time periods for filing a motion for court review pursuant to sections 3.02(a) or 3.03(a) and for filing a “recusal appeal from the [Court of Appeals or Court of Criminal Appeals]” pursuant to section 3.02(c) are jurisdictional and cannot be extended by the court. The computation of time for filing the foregoing matters under section 3 shall be governed by Tenn. R. App. P. 21(a).

Section 4. Motion Seeking Disqualification or Recusal of Judicial Officer Other Than Judge of Court of Record.

4.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judicial officer acting in a capacity other than as judge of a court of record or as an appellate judge shall do so by timely making a written or oral motion. A written motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. A motion, whether written or oral, shall state with specificity all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to make a pro se motion under this rule.

4.02. While the motion is pending, the judicial officer whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken.

4.03. Upon the making of a motion pursuant to section 4.01, the judicial officer shall act promptly and, in writing, either grant or deny the motion. A written notation of the ruling on the judgment, warrant, citation, or other pleading before the judicial officer shall meet the writing requirement of the foregoing sentence; a separate written order is not required.

4.04. Judicial review of the denial of a motion made under section 4.01 necessarily depends on the forum in which the motion is made and is governed by the law applicable to that forum.

Section 5. Right to File Ethical Complaint Unaffected. The provisions of this rule do not affect the right of any person to file an ethical complaint against a judge pursuant to Title 17, Chapter 5, Tennessee Code Annotated.

Explanatory Comments.

This rule provides a procedural framework for determining when a judge should not preside over a case. There are several bases for determining when a judge should not preside over a case, including Article VI, Section 11 (“Incompetency of judges – Special Judges”) of the Tennessee Constitution, Tenn. Code Ann. § 17-2-101 (“Grounds of incompetency”), and Tenn. S. Ct. R. 10, RJC 2.11 (“Disqualification”).

Section 1. Section 1 provides a procedural framework for determination of when the judge of a trial court of record should not preside over a case.

Section 1.02 provides that, while the motion is pending, the judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good

cause. A finding by the judge that the motion is frivolous, untimely, or interposed merely for delay constitutes good cause, as anticipated by section 1.02, such that the trial judge may continue to preside over the case to the extent the judge deems appropriate.

Although the rule does not state a specific period of time within which the motion must be filed, a motion under this rule should be made promptly upon the moving party becoming aware of the alleged ground or grounds for such a motion. The requirement that the motion be timely filed is therefore intended to prevent a party with knowledge of facts supporting a recusal motion from delaying filing the motion to the prejudice of the other parties and the case. Depending on the circumstances, delay in bringing such a motion may constitute a waiver of the right to object to a judge presiding over a matter. Further, the delay in bringing a motion or the timing of its filing may also suggest an improper purpose for the motion.

Section 1.03 provides that, if the judge denies the motion, “the judge shall state in writing the grounds upon which he or she denies the motion.” That requirement is intended both to inform the parties of the basis for the judge’s ruling and to facilitate appellate review, should the unsuccessful movant file an appeal. By comparison, if the judge grants a disqualification motion, there is no need for the order to state the grounds of the ruling because, in granting the motion, the judge has determined that it would not be appropriate for him or her to preside over the case. And for that reason, this rule does not permit an appeal from the granting of a disqualification motion.

Juvenile courts are courts of record, and the judges of those courts therefore are included within this section. Thus, a juvenile court judge who denies a disqualification motion must file a written order complying with section 1.03. Other judicial officers who serve in a juvenile court, such as a magistrate or referee, are covered by section 4 of this rule.

Section 2. Section 2 provides for an accelerated interlocutory appeal as of right from a trial judge’s order denying a motion for disqualification. It also sets out the appellate procedure governing such appeals. The provisions of this rule supercede any inconsistent provisions of the Tennessee Rules of Appellate Procedure for purposes of the accelerated interlocutory appeal. Additionally, because section 2.01 states the two “exclusive methods” for seeking appellate review of the trial judge’s ruling on a motion filed pursuant to this rule, neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge’s ruling on such a motion.

Section 2.02 states that “appropriate appellate court,” as used in the section, means the court to which an appeal would lie from the trial court’s final judgment in the case. Thus, the petition for recusal appeal should be filed in the Court of Appeals in cases that would be appealed to that court following the trial court’s final judgment. Similarly, the petition should be filed in the Court of Criminal Appeals in cases that would be appealed to that court following the trial court’s final judgment. The petition should be filed in the Supreme Court in worker’s compensation cases, which are appealed directly to the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225.

As stated above, juvenile courts are courts of record. The accelerated interlocutory appeal

procedure set out in section 2 therefore applies to a juvenile court judge's denial of a disqualification motion. As a result, an interlocutory appeal as of right lies to either the Court of Appeals or the Court of Criminal Appeals (see the definition of "appropriate appellate court" in section 2.02) from the juvenile court judge's denial of a disqualification motion, even in those juvenile proceedings in which a de novo appeal to criminal or circuit court is ordinarily available. *See* Tenn. Code Ann. § 37-1-159(a) (providing for a de novo appeal to criminal court in a delinquency proceeding and for a de novo appeal to circuit court in an unruly child proceeding or a dependent and neglect proceeding).

Section 3. Section 3 provides a procedural framework for determination of when an appellate judge or justice should not preside over a case. It also provides for review of the judge's or justice's decision if he or she denies the motion. See the Comment to section 1 for a discussion of the timeliness of motions filed pursuant to this rule. Also, see the Comment to section 1.03 for a discussion of the requirement that, if the judge or justice denies the motion, "the judge [or justice] shall state in writing the grounds upon which he or she denies the motion."

Section 4. Section 4 provides a procedural framework for determination of when a judicial officer other than a judge of a trial court of record or an appellate judge should not preside over a case. Note, however, that section 1 of this rule applies to a "judge acting as a court of record." Consequently, section 1 applies to a general sessions judge who, by private act, exercises jurisdiction over certain types of cases typically heard in courts of record (e.g., family-law cases, juvenile proceedings, etc.). See the Comment to section 1 for a discussion of the timeliness of motions made pursuant to this rule.

Given the informality of proceedings before judges of the general sessions and municipal courts, as well proceedings before other types of judicial officers, and because of the varying statutes, ordinances, and rules and regulations applicable to the many different types of proceedings before such officers, it is not possible to address in this rule the method for seeking judicial review of the denial of a motion for disqualification in every type proceeding covered by this section. Section 4 therefore does not establish specific appeal procedures governing recusal motions made in such proceedings. Thus, the general law applicable to each proceeding will govern. For example, a general sessions court's judgment in a civil case can be appealed to circuit court for a de novo proceeding; with a de novo review of the general sessions court's judgment readily available, there is no need for a separate appeal mechanism for reviewing a general sessions judge's denial of a motion for disqualification. Similarly, rulings of some judicial officers (e.g., a magistrate, referee or master) can be subject to the approval or review of a judge of a court of record. These examples are provided to illustrate that, in the various proceedings covered by this section, review of a judge's or other judicial officer's denial of a motion for disqualification should be sought in accordance with the appeal procedure generally available for review of the judge's or judicial officer's other rulings.

2016 Amendments. Effective [insert effective date], Rule 10B is amended in the following respects.

Sections 2.08 and 3.04 are added to the rule. Those new provisions provide that the time periods for filing the various documents specified in sections 2 and 3 are jurisdictional and

cannot be extended by the court. The new sections 2.08 and 3.04 also provide that the computation of time for filing those various documents is governed by Tenn. R. App. P. 21(a).

Section 3.02 also is amended by adding a new subdivision (b) to address the situation in which a motion alleges grounds for the disqualification or recusal of more than one judge of an intermediate appellate court. Review by the judges of the intermediate appellate court is feasible when the court is treated as a single court as provided in 3.02(a). There may be three judges of that court who can review the matter. However, if there are not three other judges of that court who can review the matter, section 3.02(b) provides that a motion for court review is not available in the intermediate appellate court under those circumstances. Instead, the amended rule permits an appeal from the intermediate court to the Supreme Court in such cases, without a motion for court review having been filed in the intermediate appellate court. Similarly, section 3.03 is amended by adding new subdivision (b) which states that a motion for court review is not available in cases in which a motion for disqualification or recusal alleges grounds pertaining to all the justices of the Supreme Court.

Sections 2 and 3 also are amended to increase the time limits for filing the various documents specified in those two sections of the rule. The former time limits for filing such documents were either ten days or fifteen days, depending on the particular document. Because sections 2 and 3 are simultaneously amended to make the time limitations jurisdictional, the time limits are increased to twenty-one days to ensure that litigants have sufficient time to meet those deadlines.

Lastly, a number of “housekeeping” amendments are made to the rule and its comments, i.e., non-substantive changes relating to formatting, etc.

[end of Exhibit B]

Exhibit C

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