



Administrative Policies
and Procedures
Tennessee Supreme Court
Administrative Office of the Courts

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Approved by: Chief Justice Roger A. Page and Michelle J. Long, Director

Subject: Interchange, designation, and substitution of trial and appellate court judges

- I. Authority: Tenn. Const. Art. VI, sec. 11, Tenn. Code Ann. §§ 17-2-101 *et seq.*, 17-2-201 *et seq.*, and Supreme Court Rules 10(B), 11.
- II. Purpose: To ensure uniformity of the procedures used in the interchange and designation of trial court judges and appellate judges.
- III. Application: Trial court judges and appellate court judges, as noted.
- IV. Definitions:

A. **Incompetence:** No judge or chancellor shall be competent, except by consent of all parties, to sit in the following cases:

- (1) Where the judge or chancellor is interested in the event of any cause;
- (2) Where the judge or chancellor is connected with either party, by affinity or consanguinity, within the sixth degree, computing by the civil law;
- (3) Where the judge or chancellor has been of counsel in the cause;
- (4) Where the judge or chancellor has presided on the trial in an inferior court; or
- (5) In criminal cases for felony, where the person upon whom, or upon whose property, the felony has been committed, is connected with the judge or chancellor by affinity or consanguinity within the sixth degree, computing by the civil law.

Tenn. Code Ann. § 17-2-101. See also Tenn. Const. Art. VI, sec. 11 and Supreme Court Rule 10, RJC 2.11 for additional grounds of incompetency, recusal and disqualification.

V. Policy:

A. **Recusal/disqualification due to incompetence:** If a judge is disqualified by reason of a conflict of interest or other circumstance where the judge's impartiality in choosing another judge to sit as special judge could be questioned, the judge should follow the steps set out in Section VI(A) below, as provided in Supreme Court Rule 10B, sec. 1.04.

When any chancellor is incompetent to try any cause, a circuit judge may determine the cause as chancellor, with all necessary entries made

on the minutes of the chancery court and signed by the circuit judge. Tenn. Code Ann. §§ 17-2-112, 17-2-113.

- B. Interchange generally:** Each state trial court judge has an affirmative duty to interchange if: (1) a judge has died or is unable to hold court; (2) two or more judges have agreed to a mutually convenient interchange; or (3) the Chief Justice has assigned by order a judge of another court pursuant to Supreme Court Rule 11. Tenn. Code Ann. § 17-2-202(a).

A judge or chancellor holding court in the circuit or division of another shall have the same power and jurisdiction as the judge or chancellor in whose place he or she is acting. Tenn. Code Ann. § 17-2-206.

C. Designation by the Chief Justice generally:

1. Whenever litigation in any chancery, circuit, criminal, probate, or appellate court becomes congested or delay in the disposition becomes imminent for any reason or upon request by any chancellor or judge, the Chief Justice shall assign a retired or regular chancellor or judge to assist in the removal of such congestion or delay. Tenn. Code Ann. § 17-2-109(a)(1). But note: Any judge has the discretion to request another judge to assist in the removal of congestion or delay if the original judge becomes aware of the need for such assistance before the Chief Justice makes the assignment. In such situations, both the requesting judge and the assigned judge may hear, try and dispose of cases in such court at the same time, both signing their respective minutes. Tenn. Code Ann. § 17-2-109(b).
2. Whenever litigation in any chancery or circuit court of this state becomes congested, or whenever litigation in any chancery or circuit court has required the recusal of a chancellor or judge, or whenever delay in the disposition of litigation becomes imminent for any reason, the Chief Justice of the Supreme Court may assign a former chancellor or judge to assist in the removal of the congestion or delay. Tenn. Code Ann. § 17-2-109(a)(2).
3. When any chancellor or circuit, criminal or appellate judge is, for any reason, unable to try the docket in any court of the chancellor's or judge's division or circuit, the chancellor or judge shall certify to the Chief Justice of the Supreme Court the fact of the inability, with a request that the Chief Justice assign some other chancellor, circuit, criminal or appellate judge to hear the case or cases that the chancellor or judge is unable to hear and decide. It is the duty of the chief justice to designate some other chancellor or circuit or criminal judge who is not or will not be engaged in hearing causes in that chancellor's or judge's own division or circuit to repair to the place where the case or cases mentioned above are to be heard, and hear and decide the case or cases in all respects as if the chancellor or judge were the duly elected judge of that division or circuit. Tenn. Code Ann. § 17-2-110

- D. Duties of Presiding Judges:** To reduce delays, correct caseload imbalances, and to promote the orderly and efficient administration of justice, the presiding judge may assign cases to judges and chancellors within his or her district. If the presiding judge is unable to correct an imbalance or reduce docket delays utilizing the available judges within the district, it is his or her affirmative duty to contact other presiding judges and request assistance or contact the Administrative Office of the Courts (AOC) for assistance pursuant to Tenn. Code Ann. § 16-3-502(3). Tenn. Code Ann. § 16-2-509(d) and (e).
- E. Expenses:** The expenses of the chancellor, judge or appellate judge who serves as assigned by the Chief Justice under Tenn. Code Ann. §§ 17-2-109 or 17-2-110, or the retired judge designated under Tenn. Code Ann. § 16-3-502(2) shall be certified by the chancellor, judge, appellate or retired judge pursuant to policies and guidelines promulgated by the Supreme Court. Such expenses shall be paid in addition to the regular salary of the judge. Tenn. Code Ann. § 17-2-111.
- F. Oaths:** Every special judge, before entering on the duties of the judge's appointment, shall take an oath before the clerk of the court and file such oath with the clerk. Tenn. Code Ann. § 17-2-120.
- G. Immunity:** Any judge or lawyer specially appointed pursuant to Tenn. Code Ann. § 17-2-109 or Tenn. Code Ann. § 16-15-209 or by interchange shall have the same immunity as the judge for whom the judge or lawyer is sitting. The state or county that would provide the defense for the judge for whom the special judge or lawyer is sitting shall be required to provide the defense for the substitute judge. Tenn. Code Ann. § 16-1-114.

VI. Procedures:

- A. Incompetency/Conflict:** If a judge is disqualified by reason of a conflict of interest or other circumstance where the judge's impartiality in choosing another judge to sit as special judge could be questioned, the judge shall follow the steps below in the sequence designated as set out in Supreme Court Rule 10B, sec. 1.04. See Tenn. Code Ann. § 17-2-101, Tenn. Const. Art. VI, sec. 11 and Supreme Court Rule 10, RJC 2.11 regarding incompetency, recusal and disqualification.
1. **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). A judge who recuses himself/herself shall not participate in selecting his/her successor, absent agreement of all parties.
 2. **Otherwise,** the presiding judge of the court shall effect an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(2) and/or (3) in sequential order. If the presiding judge is the recused judge, the presiding judge shall take no action in selecting a successor. In such cases, the presiding judge pro tempore of the court shall effect an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(2) or (3).

3. If an interchange cannot be effected by following the above procedure in sequential order, the presiding judge or the presiding judge pro tempore shall request by - using the designation request form appended to Tenn. Sup. Ct. R. 10B - the designation of a judge by the Chief Justice, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(4). **NOTE:** In a judicial district where the presiding judge is the only judge and he or she recuses himself or herself, the judge shall skip the sequential steps set forth in Tenn. Sup. Ct. R. 11, § VII(c)(2) and (3) and instead request the designation of a judge by the Chief Justice, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(4), using the designation request form.
- B. Judge's absence/inability to hold court:** If judge of a trial court of record fails to attend or is unable to hold court, as provided in Tenn. Code Ann. § 17-2-118, the following procedure shall be followed, in the sequence designated, for the selection of a substitute judge:
1. The judge shall seek interchange in accordance with Tenn. Code Ann. § 17-2-201 et seq. Tenn. Sup. Ct. R. 11 § VII(c)(1).
 2. The judge shall apply to the presiding judge or, if the applying judge is the presiding judge, the presiding judge pro tempore of the judicial district to effect an interchange with a judge of that judicial district in accordance with Tenn. Code Ann. § 16-2-509(c). Tenn. Sup. Ct. R. 11 § VII(c)(2).
 3. The presiding judge or the presiding judge pro tempore of the judicial district shall effect an interchange with a judge from another judicial district in accordance with Tenn. Code Ann. § 16-2-509(d). Tenn. Sup. Ct. R. 11 § VII(c)(3).
 4. The presiding judge or the presiding judge pro tempore shall request from the director of the Administrative Office of the Courts the designation of a judge by the Chief Justice, in accordance with Tenn. Sup. Ct. R 10B, § 1.04, Tenn. Code Ann. §§ 16-3-502(3)(A) and Tenn. Code Ann. § 17-2-110. The presiding judge or presiding judge pro tempore shall use the designation request form appended at the end of Tenn. Sup. Ct. R. 10B. Tenn. Sup. Ct. R. 11 § VII(c)(4).
- C. The Administrative Office of the Courts, absent special circumstances, cannot secure a replacement when the regular judge's absence results from:**
1. attendance at a conference, educational seminar or speaking engagement;
 2. attendance at an annually scheduled state or local bar association meeting;

3. scheduled vacation; or
4. regularly scheduled administrative days or weeks in which the judge rotates off the bench to handle administrative matters.

D. Designation and Use of Magistrates/Appointed Officers of the Judicial System: In addition to the statutory provisions governing the magistrate and clerk and master positions, the magistrate or clerk and master can be used as a lawyer substitute judge in accordance with Tenn. Code Ann. §§17-2-118(f) and 17-2-122(b). Such appointed judicial officers shall serve as a special judge only in matters related to their duties as judicial officers. Designation of magistrates or clerks and masters by the Chief Justice is not required in such cases.

The circuit or chancery court judges of a county may appoint a full-time master to serve as a judicial officer in the absence of one of the judges, upon adoption of a resolution by two-thirds majority of the county legislative body authorizing the appointment of masters. Tenn. Code Ann. § 17-2-123.

VII. Senior and Retired Judges:

A. The utilization of senior and retired judges as replacements in the trial and appellate courts must be scheduled through the Administrative Office of the Courts.