

EXHIBIT B

Proposed Changes to Tennessee Rules of Civil, Criminal and Appellate Procedure

Amend Tennessee Rules of Civil and Criminal Procedure, add a new rule to each:
Rule ____ . The following procedure shall be employed to determine whether a judge should preside over a case:

(1) Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge of a court of record, or judge acting as a court of record, shall do so by written motion. 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 needlessly increase in the cost of litigation. The motion shall be verified and accompanied by appropriate support.

(2) Upon the filing of a motion seeking disqualification, recusal, or a determination of constitutional or statutory incompetence, a judge shall act promptly by written order and either grant or deny the motion, stating the reasons for the ruling, including factual findings directly addressing the grounds upon which the motion was made.

(3) The order reflecting the court's ruling on the motion is appealable as of right on an accelerated interlocutory basis to the appropriate intermediate appellate court.

(4) 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. A judge, upon disqualification, shall not participate in selecting his or her successor.

Advisory Commission Comment: This Rule provides a procedural framework for determination of when a judge should preside over a case. There are several bases for determining when a judge should preside over a case, including Tennessee Constitution Article VI, Section 11 (incompetence), T.C.A. Title 17, Chapter 2 (incompetence, disability and interchange) and Tenn. S. Ct. R. 10, Code of Judicial Conduct Rule 2.11. For appellate procedure regarding an accelerated interlocutory appeal of an order regarding a motion for disqualification, see TRAP 3(____). A finding by the trial judge that the motion is frivolous, untimely, or interposed merely for delay constitutes good cause, as anticipated by (5) above, such that the trial judge may continue to preside over the case to the extent the judge deems appropriate.

Amend Tennessee Rules of Appellate Procedure Rule 3 by adding the following section:

() **Availability of Interlocutory Appeal as of Right in Disqualification, Recusal and Incompetence Motions.** After a trial court judge enters an order on a motion for the judge's recusal or disqualification, or determination of constitutional or statutory incompetence, an accelerated interlocutory appeal as of right by the aggrieved party lies from the order. A notice of appeal shall be filed within ten days of entry of the order. A bond for costs as required by Rule 6 shall be filed with the notice of appeal. The notice of appeal shall be accompanied by (1) a statement of the issues presented for review; (2) a statement of the facts necessary to an understanding of why the appeal lies; (3) a statement of the reasons supporting the appeal, and (4) the relief sought. The application shall be accompanied by copies of any order or opinion or parts of the record necessary for determination of the appeal. The appeal shall be decided expeditiously on an accelerated basis by a panel of the court upon a de novo standard of review. The appellate court's determination may be made without oral argument and shall be based upon the record as it existed at the time the judge acted on the motion. The court may in its discretion order further briefing by the parties within the time period set by the court. Any order or opinion issued by the appellate court should state with particularity the basis for its ruling.

Amend Tennessee Rules of Appellate Procedure Rule 22 by adding a new section as follows:

() **Motions Seeking Disqualification of an Appellate Judge.** An appellate judge whose disqualification, recusal, or determination of constitutional or statutory incompetence is sought may disqualify himself or herself by order stating the basis for disqualification and without the necessity of further action of the other members of that court. The judge in question shall act promptly by written order and either grant or deny the motion, stating the reasons for the ruling, including factual findings directly addressing the grounds upon which the motion was made. After an intermediate appellate judge acts on such a motion, an aggrieved party may file a motion for reconsideration to be determined promptly by the other judges of that court in that section upon a de novo standard of review. An accelerated appeal as of right lies to the Tennessee Supreme Court.

If a motion is filed seeking the recusal or disqualification, or determination of constitutional or statutory incompetence, of a Supreme Court justice, that justice shall act promptly by written order and either grant or deny the motion, stating the reasons for the ruling, including factual findings directly addressing the grounds upon which the motion was made. An aggrieved party may file a motion for reconsideration, which shall be determined promptly by the remaining justices of that court upon a de novo standard of review.

Advisory Commission Comment: This Rule provides a procedural framework for determination of when a judge should preside over a case. There are several bases

for determining when a judge should sit including Tennessee Constitution Article VI, Section 11 (incompetence), T.C.A. Title 17, Chapter 2 (incompetence, disability and interchange) and T. S. Ct. R. 10, Code of Judicial Conduct Rule 2.11. For appellate procedure regarding immediate interlocutory appeal of motions denied, see TRAP 3 and TRAP Rule 22.