

EXHIBIT D

Suggested Amendments to Tennessee Statutes

2-10-102(13) –

(13) “Public office” means any state public office or local public office filled by the voters;

(A) “Local public office” means any state, county, municipal, school or other district or precinct office or position, ~~including judges and chancellors,~~ that is filled by the voters, with the exception that “local public office” does not include any state public office as defined in subdivision (13)(B); and

(B) “State public office” means the offices of governor, member of the general assembly, delegate to a Tennessee constitutional convention, trial judge and chancellor, district attorney general, district public defender, judge of the court of criminal appeals, judge of the court of appeals and supreme court judge; and

23-3-102. Public officers prohibited from practicing. —

Judges and chancellors are prohibited from practicing law in any of the courts of this state. A newly elected or appointed judge or chancellor can practice law only in an effort to wind up his or her practice, ceasing to practice as soon as reasonably possible and in no event longer than one hundred eighty (180) days after assuming office. The clerks of the several courts and their deputies are also prohibited from practicing in their own courts, or in any causes commenced, brought to or carried from their courts, or commenced in any court from which an appeal lies to their court. Sheriffs and other executive officers shall not practice law in the county for which they were elected, or in any cause, originating or pending in the courts of that county. With the exception of judges, chancellors and justices, nothing in this section or any other law shall be construed to prohibit employees of the executive and judicial branches of the government of this state who are licensed to practice law in this state from voluntarily providing pro bono legal services through an organized program of pro bono legal services that receives funding pursuant to § 16-3-808 and that provides professional liability insurance for losses sustained by clients of lawyers participating in the program.

17-1-105. Practice of law prohibited. —

No judge or chancellor shall practice law, or perform any of the functions of attorney or counsel, in any of the courts of this state, except in cases in which the judge or chancellor may have been employed as counsel previous to the judge's or chancellor's election. A newly elected or appointed judge or chancellor can practice law only in an effort to wind up his or her practice, ceasing to practice as soon as reasonably possible and in no event longer than one hundred eighty (180) days after assuming office.

17-2-101. Grounds of incompetency. —

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.

17-2-109. Special judge by judicial appointments. —

(a) (1) Whenever litigation in any chancery, circuit, criminal, general sessions, juvenile, probate or appellate court of this state becomes congested or delay in the disposition of litigation becomes imminent for any reason, the chief justice of the supreme court shall assign a retired or regular chancellor or judge to assist in the removal of the congestion or delay; provided, that the assignment shall not materially interfere with the performance of the assigned chancellor's or judge's official duties. In such situation both chancellors or judges may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes.

(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.

(b) Notwithstanding subsection (a), any chancellor or judge has the discretion to request another chancellor or judge to assist in the removal of congestion or delay if the original chancellor or judge becomes aware of the need for assistance before the supreme court makes the assignment; and, in such situation, both the requesting chancellor or judge and the requested chancellor and judge may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes.

(c) Nothing in this section shall be construed to interfere with the appointment of special chancellors or judges as provided elsewhere by statute.

17-2-112. Transfers from chancery to circuit court because of incompetency. —

When any chancellor is incompetent to try any cause in the court for which the chancellor is responsible, ~~the chancellor may notify any one (1) of the circuit judges, whose duty it shall be at the next term of the circuit court of the county in which the incompetency exists, and while holding the court, to~~ a circuit judge may hear and determine the cause as chancellor, for which purpose the clerk of the chancery court shall bring before the chancellor all the papers in the cause, and the necessary entries shall be made on the minutes of the chancery court, and signed by the circuit judge presiding.

17-2-118. Substitute judges. —

(a) If, for good cause, including, but not limited to, by reason of illness, physical incapacitation, vacation or absence from the city or judicial district on a matter related to the judge's judicial office, the judge of a state or county trial court of record is unable to hold court, the judge shall appoint a substitute judge to hold court, preside and adjudicate.

(b) A substitute judge shall possess all of the qualifications of a judge of the court in which the substitute is appointed.

(c) No substitute judge may be appointed for a period of more than three (3) days; provided, that the judge appointed pursuant to this section may finish any trial that is commenced during the period of appointment.

(d) A substitute judge appointed pursuant to this section shall have no authority to award fees except those that are statutory.

(e) A substitute judge shall not preside over a cause without a consent form signed by all litigants who are present at the beginning of the proceeding. The consent form shall plainly state that the substitute judge has not been duly elected by the citizens of the judicial district or appointed by the governor but has been appointed pursuant to this section. Further, the consent form shall include the name of the lawyer appointed as substitute judge, the judge of the court in which the substitute judge is sitting, the date for which the substitute judge was appointed and the reason for the regular judge's absence. The consent form shall be transmitted and maintained on file for public inspection at the administrative office of the courts in Nashville.

(f) (1) Subsections (a)-(e) shall not apply where a judge finds it necessary to be absent from holding court and appoints as a substitute judge:

(A) A duly elected or appointed judge of any inferior court; or

(B) A full-time officer of the judicial system under the judge's supervision whose duty it is to perform judicial functions, such as a juvenile magistrate, a child support magistrate or clerk and master, who is a licensed attorney in good standing with the Tennessee supreme court. The judicial officer shall only serve as special judge in matters related to that officer's duties as a judicial officer.

(2) Notwithstanding subsections (a)-(e), a judge shall have the authority to appoint a substitute judge as provided in subdivision (f)(1).

17-2-202. Duty to interchange. —

(a) 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 (2) or more judges have agreed to a mutually convenient interchange;

~~(3) The judge is incompetent under § 17-2-101; or~~

(4) The chief justice of the supreme court has assigned by order a judge to another court pursuant to Tenn. Sup. Ct. R. 11.

(b) A failure to comply with an interchange order of the supreme court is a judicial offense under § 17-5-302(2). The chief justice shall report such failure to comply immediately to the presiding judge of the court of the judiciary. The clerk of the supreme court shall maintain such reports for public inspection.