



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

Index #: 4.01

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Supersedes:

Approved by: Chief Justice Frank F. Drowota, III and Cornelia A. Clark, Director

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

- I. Authority: Tenn. Code Ann. §§ 17-2-109, 17-2-201 *et seq.* and Supreme Court Rule 11.
- II. Purpose: To ensure uniformity of the procedures used in the interchange and designation of trial court judges.
- III. Application: Trial court judges and appellate court judges, as noted.
- IV. Definitions: None.
- V. Policy:
 - A. 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; (3) the judge is incompetent under the provisions of Tenn. Code Ann. § 17-2-101; or (4) 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.*
 - B. Interchange in certain divorce actions: In counties having a population of over 700,000, general sessions judges may sit by interchange as a circuit court judge or chancellor for the exclusive purpose of hearing and deciding uncontested and irreconcilable differences in divorce cases. *Tenn. Code Ann. § 17-2-209(a).*
 - C. Designation generally: Whenever litigation in chancery, circuit, civil, or appellate courts 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. Such

assignment shall not materially interfere with the performance of the assigned judge's official duties.

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.*

- 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 for assistance pursuant to *Tenn. Code Ann. § 16-3-502(3)*. *Tenn. Code Ann. § 16-2-509(d) and (e)*.
- E. Designation and Use of Referees/Appointed Officers of the Judicial System: In addition to the statutory provisions governing the referee and clerk and master positions, the referee 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 referees or clerks and masters by the Chief Justice is not required in such cases.

In counties with a metropolitan form of government and a population over 500,000, the circuit court judges may appoint a full-time master to serve as a judicial officer in the absence of one of the judges. *Tenn. Code Ann. § 17-2-123.*

- F. Immunity for Judges: 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 county where the special judge or lawyer is sitting shall be required to provide the defense. *Tenn. Code Ann. § 16-1-114.*
- G. 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.*

- H. 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.*
- VI. Procedures: Where a judge of a trial court of record is incompetent to try any case pending before that judge, as provided in *Tenn. Code Ann. § 17-2-202*, or the 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:
- A. The judge shall seek interchange in accordance with *Tenn. Code Ann. § 17-2-201 et seq.*
 - B. The judge shall apply to the presiding judge of the judicial district to effect an interchange with a judge of that judicial district in accordance with *Tenn. Code Ann. § 16-2-509(d)*.
 - C. The presiding judge of the judicial district shall effect an interchange with a judge from another judicial district in accordance with *Tenn. Code Ann. § 16-2-509(e)*.
 - D. The presiding judge 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. Code Ann. §§ 16-3-502(3)(A)* and *17-2-110*.
 - E. 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 apply to the Administrative Office of the Courts for assistance in finding a judge to sit by interchange or designation. See Supreme Court Rule 10, Canon 3(E) regarding disqualification.
 - F. 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.

- VII. Alternate Procedure: Lawyer as Substitute Judge: Only if the procedures set forth above fail to provide a judge to preside over the docket or case will a judge appoint a lawyer to preside as a substitute judge pursuant to Tenn. Code Ann. § 17-2-118. Appointments pursuant to this section will conform to the following requirements:
- A. An attorney who is appointed substitute judge must possess all the qualifications of a judge, including the age and residency requirements, and the attorney must be in good standing under the rules of the Supreme Court. The substitute judge shall be subject to the applicable provisions of the Code of Judicial Conduct, including Canon 8.
 - B. The substitute judge shall take an oath of office as provided in Tenn. Code Ann. § 17-2-120, and the substitute judge shall certify compliance with this rule by affixing his or her signature to the substitute judge consent form.
 - C. The authority of a substitute judge to fix fees pursuant to Tenn. Code Ann. § 17-2-118 is limited to cases in which the exact amount of the fee is set by statute.
 - D. The substitute judge must ensure that all litigants who are present at the beginning of each proceeding give their consent to the use of a substitute judge in their case. All litigants who are present at the beginning of the proceedings in a case and the attorneys of record for all parties who consent to the service of the substitute judge must complete Part B of the substitute judge consent form. Without such consent, the substitute judge shall not preside on that case. Part C of the substitute judge consent form must be completed by the substitute judge in each case on which that judge presides.
 - E. The incompetent or absent judge must complete Part A of the substitute judge consent form. The judge must specify the reason for his or her incompetence or absence. If the judge cites absence for a cause other than a reason listed in Tenn. Code Ann. § 17-2-118(a), the specific reason for the absence must be set forth on the form.
 - F. The clerk of the court shall certify that the appointment was made and that the substitute judge took the statutory oath of office and that the oath of office was filed in the clerk's office. The certification shall be made on Part D of the substitute judge consent form.
 - G. At the end of each month, all substitute judge consent forms will be transmitted by the presiding judge of the judicial district to the Administrative Office of the Courts where they will be available for

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public inspection during regular business hours. Such forms shall be maintained on file at the Administrative Office of the Courts for at least eight (8) years after they are received. *Supreme Court Rule 11.*

VIII. 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.