

 <p style="text-align: center;"> <b>Administrative Policies and Procedures</b>  <b>Tennessee Supreme Court</b>  <b>Administrative Office of the Courts</b> </p> <p style="text-align: center;">OAR</p>	Index #: 4.02	Page 1 of 5
	Effective Date: 09/01/22	
	Supersedes: 4.02 (11/1/01)	
Approved by: Chief Justice Roger A. Page and Michelle J. Long, Director		
Subject: Interchange, designation, and substitution of judges of general sessions and juvenile courts		

- I. **Authority:** Tenn. Const. Art. VI, sec. 11, Tenn. Code Ann. §§ 16-15-209, 17-2-107, 17-2-208, and Supreme Court Rules 10(B), 11.
- II. **Purpose:** To ensure uniformity of the procedures used in the interchange and designation of general sessions and juvenile court judges.
- III. **Application:** General sessions and juvenile court judges.
- 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.

The provisions of Title 17, Chapter 2, in relation to the incompetency of judges and chancellors, and to the disposition of causes in which they are incompetent, shall equally apply to judges of the courts of general sessions, and the judges may interchange with each other when necessary for the dispatch of business. Tenn. Code Ann. § 17-2-107.

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.
- B. **Interchange generally:** Notwithstanding any other law to the contrary, judges of courts of general sessions and juvenile courts may interchange with each other whenever causes exist making an interchange necessary or for mutual convenience. The interchanging judge shall not be required to be a resident of the county of the judge for whom such judge is sitting, but must otherwise possess the same qualifications as such judge. Tenn. Code Ann. § 17-2-208.

C. **Designation by the Chief Justice generally:**

Whenever litigation in any general sessions or juvenile 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 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 judge's official duties. In such situation judges may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes. 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).

- D. **Expenses and Compensation:** A general sessions or juvenile judge assigned to a court outside the judge's county of residence shall receive reimbursement for travel expenses from the county to which the judge is assigned. Reimbursement shall be in an amount in accordance with the comprehensive travel regulations promulgated by the supreme court. Tenn. Code Ann. 16-15-209(b). The county legislative body, by resolution adopted by a two-thirds ( $\frac{2}{3}$ ) vote, may authorize the payment of compensation to a special judge selected pursuant to Tenn. Code Ann. 16-15-209(a)(3). The amount of compensation shall not exceed the rate of compensation for other judges of the general sessions court or juvenile court for the county. Tenn. Code Ann. 16-15-209(c).

A general sessions or juvenile judge selected to serve by interchange pursuant to subdivision (a)(1) in a court outside the judge's county of residence shall receive reimbursement for travel expenses from the county to which the judge travels to serve. Reimbursement shall be assessed in accordance with the standard mileage rate, maximum parking fee, maximum lodging credit, maximum meals, and incidentals

credit set forth in the last published comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter. Travel expenses relative to mileage, parking, meals, and incidentals shall not exceed one hundred dollars (\$100) per day. A general sessions or juvenile judge entitled to reimbursement pursuant to this subsection must submit all travel expense claims to the appropriate county official responsible for processing travel reimbursement. Tenn. Code Ann. § 16-15-209(i).

- E. **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.
- F. **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 should 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, made applicable to General Sessions and Juvenile Courts by Tenn. Code Ann. 17-2-107, 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. If the recusing judge is a general sessions judge or juvenile court judge, and he or she is the only general sessions or juvenile court judge in that county, 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 appended to the end of Tenn. Sup. Ct. R. 10B.
- B. **Judge's absence/inability to hold court:** If a judge of a General Sessions Court or Juvenile Court finds it necessary to be absent from holding court, the judge may seek a special judge in accordance with

the requirements of Tenn. Code Ann. § 16-15-209(a) in the sequence designated below.

1. The judge shall attempt to identify another judge who may serve by interchange, pursuant to Tenn. Code Ann. §17-2-208. If another judge cannot serve by interchange, a judge may seek to find any former or retired judge, who will, by mutual agreement, sit as special judge. The special judge shall serve by designation of the chief justice of the supreme court.
  2. The judge may apply to the administrative office of the courts for assistance in finding a judge to sit by designation of the chief justice as a special judge.
- 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. **Lawyer as Substitute Judge: Only after exhausting the procedures set forth in Section VI(B) above,** a judge may appoint a lawyer from a list, on a rotating basis, of lawyers that have been previously approved by the judge or judges of the district or county who are constitutionally qualified, in good standing, and possess sufficient experience and expertise. Tenn. Code Ann. § 16-15-209(a)(4).

A lawyer appointed is subject to the following limitations, which shall be made known to persons attending any court proceeding presided over by a lawyer, as evidenced by an entry in the minutes or other permanent record of the court:

1. The lawyer may preside only if the parties and counsel are notified that the duly elected or appointed judge will be absent and that a practicing lawyer will serve as a special judge;
2. The parties choose to proceed and not to continue the case pending return of the duly elected or appointed judge;
3. The lawyer shall not approve the payment of attorney's fees involving an indigent defense claim or any discretionary fees. A special judge shall approve fees only when the exact amount is set by statute; and

4. At the opening of any court session presided over by a lawyer appointed pursuant to this section, an announcement shall be made to persons in attendance conveying the information contained in subdivisions (1) and (2) above. The making of such an announcement constitutes compliance with the notice requirements of this section.
  
- E. **Designation and Use of Magistrates/Appointed Officers of the Judicial System:** Notwithstanding § 16-15-209 or § 17-2-109 or any other relevant provision to the contrary, a judge shall have the authority to appoint a special judge as provided. Tenn. Code Ann. §§ 16-15-209 and 17-2-109 and any other relevant provision shall not apply where a judge finds it necessary to be absent from holding court and appoints as a substitute judge an 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 their duties as judicial officer. Tenn. Code Ann. § 17-2-122
  
- F. **Procedure for Sudden and Unexpected Emergency:** Notwithstanding the procedure set out above, a General Sessions or Juvenile Court Judge who encounters a sudden and unexpected emergency which causes the judge to be absent from court may forego the requirements of that procedure and appoint a lawyer who meets the requirements set out in Tenn. Code Ann. § 16-15-209(a)(3) (See Section VI(D) of this policy for attorney qualifications). The circumstances requiring the appointment of a lawyer pursuant to this procedure shall be entered upon the minutes or other permanent record of the court. Tenn. Code Ann. § 16-15-209(d). Lawyers appointed as special judges pursuant to this emergency exception are subject to the limitations set out in Section VI(D) of this policy.
  
- G. For procedures and reporting requirements which apply exclusively to counties with a population of over 700,000, according to the 1980 or subsequent census, or 800,000 according to the 1990 or any subsequent census, see Tenn. Code Ann. §§ 16-15-209(e) – (h) and 17-2-209.