

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 14th day of February, 2018, the following order was made and entered:

IN RE: ADOPTION OF AMENDMENT TO RULE 1B(e)(1) OF THE
 ADMINISTRATIVE RULES FOR MAGISTRATE COURTS –
 DOCKET NO. 17-RULES-14

On a former day, November 14, 2017, the Court published for comment proposed amendments to 1B(e)(1) of the Administrative Rules for Magistrate Courts. No comments were filed.

On this day came the Court on its own motion and proceeded to consider the proposed amendments for final adoption. Upon consideration, the Court is of the opinion to and does hereby adopt the following rule amendments, effective immediately. Insertions to the rule are indicated by underscoring to read as follows:

Administrative Rules for Magistrate Courts

* * *

Rule 1B. Disqualification.

* * *

(e)(1) When a magistrate is disqualified or recused, the magistrate shall immediately transfer all matters relating to the case to the magistrate court clerk, who shall forthwith assign the case to another magistrate within the county pursuant to Rule 2 of these rules or, if no other magistrate is available, shall forthwith notify the supervising circuit judge of the need for the assignment of a magistrate from another county to hear the case. If all magistrates in the county where the case is pending are recused or disqualified, and if this county is located within a multi-county circuit, the supervising chief judge shall assign a magistrate from another county within the circuit pursuant to West Virginia Code §50-1-13(b). If no magistrate is available or the circuit is a single-county circuit, the supervising chief judge must submit a letter to the Chief Justice stating the reasons for the magistrates’ recusals and request that a new magistrate from another circuit be assigned. The Chief Justice shall, within 5 days, either deny the request if the reasons for disqualification or recusal are insufficient and direct that one of the magistrates in that county preside over the case, or, if the reasons are sufficient, the Chief

Justice shall assign a new magistrate from another circuit.

* * *

Justice Davis would not amend the Rule as she believes the amendment usurps the authority of the chief judge in the circuit.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

