

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on March 28, 2025, the following order was made and entered:

RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO RULE 17 OF THE WEST VIRGINIA TRIAL COURT RULES, No. 25-103

Under Article VIII, §§ 1 and 3 of the West Virginia Constitution, the Court has jurisdiction to promulgate court rules. By that authority, the Court has considered amendments to Rule 17 of the West Virginia Trial Court Rules regarding the disqualification and assignment of judges.

Upon consideration and review, the Court is of the opinion that the following amendments to Rule 17 of the West Virginia Trial Court Rules should be published for a period of public comment of thirty days. Comments must be filed in writing with the Office of the Clerk on or before Monday, April 28, 2025. Comments may be submitted in writing through the Court's e-filing system, by email to scawv.filing@courtswv.gov, or by letter addressed to the Clerk of Court. Additions are indicated by underscoring, and deletions are indicated by strike-through.

West Virginia Trial Court Rules

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RULE 17. DISQUALIFICATION AND TEMPORARY ASSIGNMENT OF JUDGES.

Rule 17.01. Motions for Disqualification.

Upon a proper disqualification motion, as set forth in this rule, a judge shall be disqualified from a proceeding only where the judge's impartiality might reasonably be questioned in accordance with the principles established in Canon 2, Rule 2.11 of the Code of Judicial Conduct.

(a) In any proceeding, any party may file a written motion for disqualification of a judge within thirty (30) days after discovering the ground for disqualification. The motion shall be addressed to the judge whose disqualification is sought and be filed with the circuit clerk at least seven (7) days in advance of any date set for a ~~non-trial~~

~~proceeding~~ hearing in the case or at least twenty-one (21) days in advance of any trial, final hearing, or disposition date set in the case and shall:

(1) State the facts and reasons for disqualification, including the specific provision of Canon 2, Rule 2.11 of the Code of Judicial Conduct asserted to be applicable:

(2) Be accompanied by a verified certificate of counsel of record or unrepresented party that they have read the motion; that after reasonable inquiry, to the best of their knowledge, information, and belief, it is well grounded in fact and is warranted by either existing law or a good faith argument for the extension, modification, or reversal of existing law; that there is evidence sufficient to support disqualification; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(3) Be submitted by copy directly to the judge, and served upon counsel of record or unrepresented party.

(b) Upon the judge's receipt of a copy of such motion, regardless of whether the judge finds good cause and agrees to the disqualification motion or not, the judge shall:

(1) proceed no further in the matter;

(2) transmit forthwith to the Chief Justice a copy of the motion and certificate, together with a letter stating the judge's response to the motion and the reasons therefor, including such matters and considerations as the judge may deem relevant; and

(3) make a copy of the letter part of the record and file same in the office of the circuit clerk with copies to counsel of record and any unrepresented party.

(c) Upon receipt of a disqualification ~~or recusal~~ motion pursuant to subdivision (b) of this rule, or a request for voluntary recusal pursuant to TCR 17.02(b), the Chief Justice shall enter an order within fourteen (14) days providing for the judge to either remain on the case or be removed, in which case the Chief Justice shall appoint another judge to hear the matter.

(d) If the information is insufficient to permit the Chief Justice to make a ruling, the Chief Justice may direct that the judge conduct a hearing on matters relating to the disqualification motion and then proceed pursuant to this rule.

(e) In the event a disqualification motion is filed with the circuit clerk and written notice thereof is submitted to the judge less than seven (7) days in advance of the date set for a ~~non-trial proceeding hearing~~, or less than twenty-one (21) days in advance of the date set by the scheduling order for trial, final hearing, or disposition, the judge may either grant or deny the disqualification motion as follows:

(1) If the judge grants the motion for disqualification, the judge shall proceed no further in the matter and shall forthwith transmit the motion and reason for the ruling to the Chief Justice in accordance with subdivision (b)(2) of this rule, and the Chief Justice shall consider the matter in accordance with this rule.

(2) If the judge denies the motion for disqualification the judge shall allow the moving party to make a record on the disqualification issue and:

(a) in a ~~non-trial proceeding hearing~~ when the date set by order for trial is not within 21 days of the filing of the motion for disqualification, the judge may conduct the ~~non-trial proceeding hearing~~, and shall transmit the disqualification motion, the record, and reason for the ruling on the disqualification issue to the Chief Justice in accordance with subdivision (b)(2) of this rule and the Chief Justice shall consider the matter in accordance with this rule; or

(b) if a trial, final hearing, or disposition date is set by order within 21 days of the filing of the disqualification motion, the judge is not required to transmit the motion or record on the disqualification issue to the Chief Justice, but the issue may be addressed on appeal.

Rule 17.02. Voluntary Recusal by a Judge.

~~In the absence of a disqualification motion having been filed, except as provided by Rule 17.03 below, a judge seeking voluntary recusal shall so inform the parties and shall proceed pursuant to the applicable provisions of TCR 17.01(b), provided, that in lieu of a motion and certificate, the judge shall transmit to the Chief Justice a letter stating the reasons why the judge is requesting recusal, with reference to the relevant section(s) of the Code of Judicial Conduct and the Chief Justice shall rule pursuant to TCR 17.01(c) or TCR 17.01(d).~~

(a) In the absence of a disqualification motion being filed, if a judge voluntarily recuses himself or herself from a case pursuant to Canon 2, Rule 2.11 of the Code of Judicial Conduct, the judge shall enter an order reflecting the recusal. The order shall be served on all counsel of record and unrepresented parties. In a multi-judge circuit, the

case shall then be reassigned in accordance with the practice of the circuit. In a single-judge circuit, the procedures of TCR 17.06 shall be followed.

(b) If all judges in a multi-judge circuit are disqualified, the judge who is assigned to the case shall transmit a letter to the Chief Justice stating the reasons why the judge is disqualified and requesting the appointment of a special judge. The Chief Justice shall grant or refuse the request in accordance with the timeframe and procedures specified in TCR 17.01(c) or (d).

Rule 17.03. Applicability.

~~The preceding provisions of this rule do not apply to the assignment or reassignment of cases within a multi-judge circuit previous to the filing of a motion for disqualification.~~

Rule 17.03. Assignment of Special Judge.

Whenever the Chief Justice enters an order assigning a judge to a case under the provisions of TCR 17.01 or TCR 17.02(b), the assignment is specific to the special judge who is named in the order. If the assigned special judge should thereafter resign, retire, or have any other reason why he or she is unable to preside over the case, including seeking voluntary recusal in accordance with Rule 17.02, the special judge shall notify the Chief Justice by letter of the reason he or she is unable to fulfil the special judge assignment. The Chief Justice shall determine whether to end the special judge assignment and appoint a new special judge to the case.

Rule 17.04. Time.

Computation of any time period prescribed or allowed by this rule shall be governed by W. Va. R. Civ. P. 6.

Rule 17.05. Challenge to Disqualification Rulings.

All rulings and orders relating to the recusal or disqualification of a judge shall be considered interlocutory in nature and not subject to direct or immediate appeal. This rule shall not, however, prohibit any party from seeking or using redress available by writ of prohibition, mandamus, or any other appropriate extraordinary writ as may be necessary to assure compliance with these rules by a circuit court judge. This rule is not intended to provide a means to challenge an interlocutory ruling by the Chief Justice on such disqualification issues.

~~**Rule 17.06. Unavailability Under W.Va. Code § 51-2-1(a)**~~

~~(a) The unavailability of the sitting judge in a single judge circuit shall be a ground for invoking the concurrent jurisdiction of the Kanawha County Circuit Court only upon~~

~~notification to and verification through the Supreme Court Administrative Office and affirmative referral by the Chief Justice.~~

~~(b) Upon verification of the unavailability of the sitting judge in a single judge circuit, the Chief Justice shall forthwith, by order:~~

~~(1) Refer the requesting party and the needed proceeding to the Kanawha County Circuit Court; or~~

~~(2) Refer the requesting party and the needed proceeding to the different judge already assigned, if any, to the single judge circuit involved; or~~

~~(3) Assign a different judge to the single judge circuit involved to conduct the needed proceeding; or~~

~~(4) Direct that the requesting party await the return of the sitting judge in the single judge circuit involved.~~

~~(c) The judges of the Kanawha County Circuit Court are prohibited from entertaining or acting on any matters pursuant to W. Va. Code § 51-2-1(a) without verification of referral by the Chief Justice.~~

~~(d) No motion for the disqualification of the sitting judge in a single judge circuit shall be referred to the Kanawha County Circuit Court.~~

~~(e) Cases in which matters are referred to the Kanawha County Circuit Court pursuant to TCR 17.06(b)(1) remain cases of the original county of venue within the single judge circuit involved, and the original county of venue is the proper initial forum for any subsequent proceedings in such cases.~~

~~(f) The clerk of the Kanawha County Circuit Court shall forthwith transmit to the circuit clerk of the original county of venue a certified or attested copy of every document filed or entered in matters referred to the Kanawha County Circuit Court pursuant to TCR 17.06(b)(1).~~

Rule 17.06. Unavailability under W. Va. Code § 51-2-1(c)(Supp. 2024).

(a) If the sitting judge in a single-judge circuit shall be unavailable by reason of sickness, vacation, or other reason including voluntary recusal as set forth in TCR 17.02, the Circuit Court of Raleigh County has concurrent jurisdiction pursuant to W. Va. Code § 51-2-1(c) (Supp. 2024). In such instances, the following procedures shall be utilized.

(1) If the judge in the single-judge circuit is voluntarily recused from a case, the judge must enter an order in the affected case in the circuit clerk's office in the county where the case is pending. This order shall indicate the judge's voluntary recusal, notify the Chief Judge of the Circuit Court of Raleigh County of the recusal, and request the Chief Judge of the Circuit Court of Raleigh County to assign a judge of the Circuit Court of Raleigh County to preside over the case. The circuit clerk shall ensure that the order is served on all counsel of record and any unrepresented party, and shall transmit the order to the Chief Judge of the Circuit Court of Raleigh County. The Chief Judge of the Circuit Court of Raleigh County shall then assign a judge of the Circuit Court of Raleigh County to the case; this assignment shall be reflected in an order entered in the circuit clerk's office in the county where the case is pending and shall be served on all counsel of record and any unrepresented party.

(2) If the judge in the single-judge circuit is temporarily unavailable by reason of sickness, vacation, or other reason not including voluntary recusal and determines that the assistance of another judge is necessary, the judge in the single-judge circuit shall inform the Chief Judge of the Circuit Court of Raleigh County. The Chief Judge of the Circuit Court of Raleigh County may arrange for a judge of the Circuit Court of Raleigh County to preside in the single-judge circuit on a temporary basis.

(b) The assignment of a Raleigh County judge pursuant to this rule does not change the venue of an affected case. However, this does not preclude the parties from voluntarily agreeing to attend hearings or proceedings in Raleigh County, and the circuit court may conduct hearings or proceedings by using videoconferencing as provided in TCR 14.

(c) Any and all documents filed or entered in matters reassigned to a Raleigh County judge pursuant to this procedure shall be entered in the circuit clerk's office of the original county of venue.

Rule 17.07. Sanctions.

If a motion is signed in violation of TCR 17.01, the Chief Justice or the judge whose disqualification was sought, upon motion or sua sponte, may refer the matter to the appropriate disciplinary authority or may impose upon the person who signed it, an unrepresented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the motion, including reasonable attorney fees.