

Clean Version of Present Rule 18a with Suggested Changes [PJs]
[September 23, 2009] s

Rule 18a. Procedure for Recusal and Disqualification of Judges.

(a) Filing and Contents of Motion. At least ten days before the date set for trial or other hearing in any trial court, any party may file a motion stating one or more of the grounds specified in rule 18b why the judge before whom the case is pending should not sit in the case. If the judge was assigned to the case within ten days of the date set for trial or other hearing, the motion shall be filed at the earliest practicable time. The motion shall be verified and shall state with detail and particularity the reasons why the judge should not sit. The judge's rulings may not be a basis for the motion. The motion shall be made on personal knowledge and shall set forth facts that would be admissible in evidence, provided that facts may be stated upon information and belief if the grounds of such belief are specifically stated.

(b) Notice. On the day the motion is filed, copies shall be served on the judge and all other parties or their counsel of record. Any other party may file an opposing or concurring statement at any time before the motion is heard.

(c) Voluntary Recusal. Prior to any further proceedings in the case, the judge shall either recuse voluntarily or request the presiding judge of the administrative judicial region ("presiding judge") to assign a judge to hear the motion. If the judge recuses voluntarily, the judge shall enter an order of recusal and request the presiding judge to assign another judge to sit, and shall take no further action in the case except for good cause stated in writing or on the record.

(d) Referral to Presiding Judge. If the judge declines to recuse voluntarily, the judge shall forward to the presiding judge an order of referral and copies of the motion and all opposing and concurring statements. Except for good cause stated in writing or on the record, the judge shall take no further action in the case until the motion has been heard.

(e) Hearing.

(1) If the motion does not comply with subsection (a) or is otherwise legally insufficient, the presiding judge may deny it without a hearing.

(2) If the motion complies with subsection (a) and is legally sufficient, the presiding judge may hear the motion or assign another judge to hear it, and shall cause notice of such hearing to be given to all parties or their counsel and make such other orders, including orders on interim or ancillary relief in the pending cause, as justice may require.

(3) The judge who hears the motion:

(a) must hear it as soon as practicable, and may hear it immediately; and

(b) may conduct the hearing by telephone on the record and may consider facsimile or electronic copies of documents as permitted by the rules of evidence.

(4) A presiding judge is not subject to objection under chapter 74 of the Government Code, and a motion to recuse a presiding judge has no effect, except by order of the Chief Justice of the Supreme Court.

(5) If the motion is granted, the presiding judge shall assign another judge to the case.

(f) Assignment by Chief Justice. The Chief Justice of the Supreme Court may also assign judges and make rulings pursuant to statute.

(g) Sanctions. If the judge hearing the motion to recuse determines that it was frivolous, as defined by Rule 13, or was brought for delay and without sufficient cause, the judge may impose any sanction authorized by Rule 215.2(b).

(h) Appellate Review. An order denying a motion to recuse or disqualify may be reviewed for abuse of discretion on appeal from the final judgment. An order granting a motion is not reviewable by appeal, mandamus, or otherwise.