

**Present Rule 18a, with suggested deletions and additions [PJs]
[September 23, 2009]**

Rule 18a. Procedure for Recusal and ~~or~~ 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 ~~other than the Supreme Court, the Court of Criminal Appeals or the court of appeals,~~ any party may file ~~with the clerk of the court~~ 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 a judge is assigned to a case,~~ the motion shall be filed at the earliest practicable time. ~~prior to the commencement of the trial or other hearing. The grounds may include any disability of the judge to sit in the case. The motion shall be verified and shall state with detail and particularity the reasons~~ grounds why the judge before whom the case is pending 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 ~~such facts as~~ *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, ~~together with a notice that movant expects the motion to be presented to the judge three days after the filing of such motion unless otherwise ordered by the judge.~~ Any other party may file ~~with the clerk~~ 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 ~~himself~~ voluntarily or request the presiding judge of the administrative judicial ~~district region~~ ("presiding judge") to assign a judge to hear ~~such the~~ motion. If the judge recuses ~~himself~~ voluntarily, ~~he the~~ judge shall enter an order of recusal and request the presiding judge ~~of the administrative judicial district to assign another judge to sit, and shall make no further orders and shall take no further action in the case except for good cause stated in writing or on the record. the order in which such action is taken.~~

(d) Referral to Presiding Judge. If the judge declines to recuse ~~himself~~ voluntarily, ~~he the~~ judge shall forward to the presiding judge ~~of the administrative judicial district region, in either original form or certified copy,~~ an order of referral ~~and copies of~~ the motion and all opposing and concurring statements. Except for good cause stated in ~~the order in which further action is taken~~ *writing or on the record*, the judge shall make no further orders and shall take no further action in the case ~~after filing of the motion and prior to a hearing on the motion. 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.

46 (2) *If the motion complies with subsection (a) and is legally sufficient, ~~The~~ the presiding judge of*
47 *the administrative judicial district may hear the motion or assign another judge to hear it, and shall*
48 *immediately set a hearing before himself or some other judge designated by him, shall cause notice*
49 *of such hearing to be given to all parties or their counsel and shall make such other orders, including*
50 *orders on interim or ancillary relief in the pending cause, as justice may require.*

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52 (3) *The judge who hears the motion:*

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

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

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59 (4) *A presiding judge who hears a recusal motion is not subject to objection, and a motion to*
60 *recuse a presiding judge has no effect and may be disregarded, except by order of the Chief Justice*
61 *of the Supreme Court.*

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

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65 **(f) Assignment by Chief Justice.** *The Chief Justice of the Supreme Court may also appoint and*
66 *assign judges and make rulings in conformity with this rule and pursuant to statute.*

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68 **(g) Sanctions.** *If a party files a motion to recuse under this rule and it is determined by the presiding*
69 *judge or the judge designated by him at the hearing and on motion of the opposite party, that the*
70 *judge hearing the motion to recuse is determines that it was frivolous, as defined in Rule 13, or was*
71 *brought solely for the purpose of delay and without sufficient cause, the judge hearing the motion*
72 *may, in the interest of justice, impose any sanction authorized by Rule 215(2)(b). 215.2(b).*

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74 **(i) Appellate Review.** *If the motion is denied, it An order denying a motion to recuse or disqualify*
75 *may be reviewed for abuse of discretion on appeal from the final judgment. If the motion is granted,*
76 *the order An order granting a motion shall not be is not reviewable., and the presiding judge shall*
77 *assign another judge to sit in the case. by appeal, mandamus, or otherwise.*

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80 Comments

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82 Lines 10-13: This sentence was moved from existing section (e) to section (a).

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84 Lines 15-16: The new sentence implements the rule that a judge's bias must be extrajudicial and not
85 based on in-court rulings. *See Ludlow v. DeBerry*, 959 S.W.2d 265, 270-71 (Tex. App.—Houston
86 (14th Dist.) 1997, no pet.); *Grider v. Boston Co., Inc.*, 773 S.W.2d 338, 346 (Tex. App.—Dallas
87 1989, writ denied). The extrajudicial source rule was summarized in *Woodruff v. Wright*, 51 S.W.3d
88 727, 736 n.6 (Tex. App.—Texarkana 2001, pet. denied), as follows:

89 [T]he United States Supreme Court discussed the "extrajudicial source" doctrine in *Liteky*
90 *v. United States*, 510 U.S. 540, 554-56 (1994). . . . Although the Court was construing the
91 federal disqualification rule, it contains essentially the same language as Rule 18b. The
92 Court stated that opinions formed by the judge on the basis of facts introduced or events
93 occurring during proceedings do not constitute a basis for a recusal motion unless they
94 display a deep-seated favoritism or antagonism that would make fair judgment impos-
95 sible. . . . Thus, the Supreme Court reasoned that judicial remarks during the course of a
96 trial that are critical or disapproving or even hostile to counsel, parties, or their cases,
97 ordinarily do not support recusal, but they may do so if they reveal an opinion deriving
98 from an extrajudicial source and will do so if they reveal such a high degree of favoritism
99 or antagonism as to make fair judgment impossible.

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101 Lines 43-44: Motions that contain only general allegations of unfairness or partiality, or only
102 previous rulings, are legally insufficient. The regional presiding judge (not the respondent judge)
103 should be able to deny such motions without hearing.

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105 Lines 46-50: This language was moved from section (d) in the current rule.

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107 Line 54: The new language encourages prompt hearings and allows a presiding judge to hear a
108 motion *instanter*.

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110 Lines 56-57: Telephone/fax/e-mail hearings are sometimes the most efficient approach, especially
111 in rural counties. The new language would expressly authorize them.

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113 Lines 59-61: Under current law, even a frivolous motion to recuse a presiding judge stops the whole
114 process until the Chief Justice can act. This allows a *de facto* continuance. The new language will
115 allow the presiding judge to hear the underlying motion to recuse the sitting judge unless the Chief
116 Justice decides to halt the matter. The language also makes explicit the current law that the objection
117 procedure of Government Code chapter 74 does not apply.

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119 Lines 68-72: The existing sanctions provisions are essentially toothless: they require a motion for
120 sanctions *and* proof that the motion was brought *solely* for delay. The new language relaxes the
121 sanctions standard and allows the judge who hears the motion to grant sanctions *sua sponte*.