

Rule 18a with suggested changes
[October 31, 2009 clean version]

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, or the movant learned of the grounds, within ten days of the date set for trial or other hearing, the motion must be filed at the earliest practicable time. The motion must be verified and must state with detail and particularity facts that, if proven, would be sufficient to justify recusal. The judge's rulings in the case may not be a basis for the motion unless they show a deep-seated favoritism or antagonism that would make fair judgment impossible. The motion must be made on personal knowledge and must 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) Service of Motion. On the day the motion is filed, the movant must send copies to the judge, the presiding judge of the administrative judicial region ("presiding judge"), and all other parties. Any other party may file an opposing or concurring statement at any time before the motion is heard.

(c) Duties of Respondent Judge. The judge must, within three days after the motion is filed, either recuse voluntarily or request the presiding judge to assign a judge to hear the motion, even if the motion does not comply with section (a). The judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.

If the judge recuses voluntarily, the judge must enter an order of recusal and request the presiding judge to assign another judge to sit. If the judge declines to recuse voluntarily, the judge must forward to the presiding judge an order of referral and copies of the motion and all opposing and concurring statements. If the judge fails to send to the presiding judge within three days an order either recusing voluntarily or declining to recuse, the movant may notify the presiding judge of this failure.

Notwithstanding the other provisions in this rule, the judge may disregard any motion that is made after a trial or hearing has begun, but such a motion may be presented to the presiding judge with a request for stay.

(d) Hearing.

(1) If the motion does not comply with subsection (a), the presiding judge or the judge assigned to hear the motion may deny it, without an oral hearing, by written order stating the reasons why the motion does not comply.

(2) If the motion complies with subsection (a), the presiding judge may hear the motion or assign another judge to hear it, and must cause notice of such hearing to be given to all parties and

46 make such other orders, including orders on interim or ancillary relief in the pending cause, as justice
47 may require.

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49 (3) The judge who hears the motion:

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

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53 (b) may conduct the hearing by telephone on the record and may consider documents
54 submitted by facsimile or electronic mail which are admissible under the rules of
55 evidence.

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57 (4) A presiding judge who hears a recusal motion is not subject to objection under chapter 74
58 of the Government Code, and a motion to recuse a presiding judge has no effect and may be
59 disregarded, except by order of the Chief Justice of the Supreme Court.

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

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63 **(e) Subpoena of Judge.** No subpoena or other discovery may issue to the respondent judge without
64 the prior written approval of presiding judge or the judge assigned to hear the motion. Any subpoena
65 or discovery request made in violation of this paragraph may be disregarded.

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67 **(f) Sanctions.** If the judge hearing the motion to recuse determines that it was frivolous, as defined
68 in Rule 13, or was brought for delay and without sufficient cause, the judge may, after notice and
69 hearing, order the party or attorney who filed the motion, or both, to pay the reasonable attorneys'
70 fees and expenses incurred by the party opposing the motion.

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

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

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79 **(i) Disqualification.** Paragraphs (a) through (g) of this rule apply to motions seeking disqualifica-
80 tion under Rule 18b(1), but disqualification is not waived by failure to comply with time limits, and
81 appellate review of disqualification is governed by other rules.