

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9064

ORDER AMENDING RULES 18a AND 18b OF THE TEXAS RULES OF CIVIL PROCEDURE

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules 18a and 18b of the Texas Rules of Civil Procedure as follows.
2. Amended Rules 18a and 18b, with any modifications made after public comments are received, take effect August 1, 2011. Comments may be submitted to the Supreme Court of Texas in writing on or before July 1, 2011. Comments should be directed to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or kennon.peterson@txcourts.gov.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: April 11th, 2011.

Wallace B. Jefferson
Wallace B. Jefferson, Chief Justice

Nathan L. Hecht
Nathan L. Hecht, Justice

Dale Wainwright
Dale Wainwright, Justice

David M. Medina
David M. Medina, Justice

Paul W. Green
Paul W. Green, Justice

Phil Johnson
Phil Johnson, Justice

Don R. Willett
Don R. Willett, Justice

Eva M. Guzman
Eva M. Guzman, Justice

Debra H. Lehrmann
Debra H. Lehrmann, Justice

Rule 18. Recusal and Disqualification of Judges

18.1. Procedure

- (a) *Motion; Form and Contents.* A party in a case in any trial court other than a statutory probate court or justice court may seek to recuse or disqualify a judge who is sitting in the case by filing a motion with the clerk of the court in which the case is pending. The motion:
- (1) must be verified;
 - (2) must assert one or more of the grounds listed in Rule 18.2;
 - (3) must not be based solely on the judge's rulings in the case; and
 - (4) must state with detail and particularity facts that:
 - (A) are within the affiant's personal knowledge, except that facts may be stated on information and belief if the basis for that belief is specifically stated;
 - (B) would be admissible in evidence; and
 - (C) if proven, would be sufficient to justify recusal or disqualification.
- (b) *Time for Filing Motion.*
- (1) Motion to Recuse. A motion to recuse:
 - (A) must be filed as soon as practicable after the movant knows of the ground stated in the motion; and
 - (B) must not be filed after the tenth day before the date set for trial or other hearing unless, before that day, the movant neither knew nor reasonably should have known:
 - (i) that the judge whose recusal is sought would preside at the trial or hearing; or
 - (ii) that the ground stated in the motion existed.

- (2) Motion to Disqualify. A motion to disqualify should be filed as soon as practicable after the movant knows of the ground stated in the motion.

(c) *Response to Motion.*

- (1) By Another Party. Any other party in the case may, but need not, file a response to the motion. Any response must be filed before the motion is heard.
- (2) By the Respondent Judge. The judge whose recusal or disqualification is sought should not file a response to the motion.

(d) *Service of Motion or Response.* A party who files a motion or response must serve a copy on every other party. The method of service must be the same as the method of filing, if possible.

(e) *Duties of Clerk.*

- (1) Delivery of Motion or Response. When a motion or response is filed, the clerk of the court must immediately deliver a copy to the respondent judge and to the presiding judge of the administrative judicial region in which the court is located (“the regional presiding judge”).
- (2) Delivery of Order of Recusal or Referral. When a respondent judge signs and files an order of recusal or referral, the clerk of the court must immediately deliver a copy to the regional presiding judge.

(f) *Duties of Respondent Judge; Failure to Comply.*

- (1) Responding to Motion. Regardless of whether the motion complies with this rule, the respondent judge, within three business days after the motion is filed, must either:
 - (A) sign and file with the clerk an order of recusal; or
 - (B) sign and file with the clerk an order referring the motion to the regional presiding judge.

- (2) Restrictions on Further Action.
- (A) Motion Filed Before Evidence Offered at Trial. If a motion is filed before evidence has been offered at trial, the respondent 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.
- (B) Motion Filed After Evidence Offered at Trial. If a motion is filed after evidence has been offered at trial, the respondent judge may proceed, subject to stay by the regional presiding judge.
- (3) Failure to Comply. If the respondent judge fails to comply with a duty imposed by this rule, the movant may notify the regional presiding judge.
- (g) *Duties of Regional Presiding Judge.*
- (1) Motion. The regional presiding judge must rule on a referred motion or assign a judge to rule. If a party files a motion to recuse or disqualify the regional presiding judge, the regional presiding judge may still assign a judge to rule on the original, referred motion. Alternatively, the regional presiding judge may sign and file with the clerk an order referring the second motion to the Chief Justice of the Supreme Court of Texas for consideration.
- (2) Order. The ruling must be by written order.
- (3) Summary Denial for Noncompliance.
- (A) Motion to Recuse. A motion to recuse that does not comply with this rule may be denied without an oral hearing. The order must state the nature of the noncompliance. Even if the motion is amended to correct the stated noncompliance, the motion will count for purposes of determining whether a tertiary recusal motion has been filed under the Civil Practice and Remedies Code.
- (B) Motion to Disqualify. A motion to disqualify may not be denied on the ground that it was not filed or served in compliance with this rule.

- (4) Interim Orders. The regional presiding judge or judge assigned to decide the motion may issue interim or ancillary orders in the pending case as justice may require.
 - (5) Discovery. Except by order of the regional presiding judge or the judge assigned to decide the motion, a subpoena or discovery request may not issue to the respondent judge and may be disregarded unless accompanied by the order.
 - (6) Hearing.
 - (A) Time. The motion must be heard as soon as practicable and may be heard immediately after it is referred to the regional presiding judge or an assigned judge.
 - (B) Notice. Notice of the hearing must be given to all parties in the case.
 - (C) By Telephone. The hearing may be conducted by telephone on the record. Documents submitted by facsimile or email, otherwise admissible under the rules of evidence, may be considered.
 - (7) Reassignment of Case if Motion Granted. If the motion is granted, the regional presiding judge must transfer the case to another court or assign another judge to the case.
- (h) Sanctions. After notice and hearing, the judge who hears the motion may order the party or attorney who filed the motion, or both, to pay the reasonable attorney fees and expenses incurred by other parties if the judge determines that the motion was:
- (1) groundless and filed in bad faith or for the purpose of harassment; or
 - (2) clearly brought for unnecessary delay and without sufficient cause.
- (i) *Chief Justice*. The Chief Justice of the Supreme Court of Texas may assign judges and issue any orders permitted by this rule or pursuant to statute.

(j) *Appellate Review.*

- (1) Order on Motion to Recuse.
 - (A) Denying Motion. An order denying a motion to recuse may be reviewed only for abuse of discretion on appeal from the final judgment.
 - (B) Granting Motion. An order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise.
- (2) Order on Motion to Disqualify. An order granting or denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law.

Rule 18.2. Grounds

- (a) *Grounds for Disqualification.* A judge must disqualify in any proceeding in which:
 - (1) the judge has served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;
 - (2) the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy; or
 - (3) either of the parties may be related to the judge by affinity or consanguinity within the third degree.
- (b) *Grounds for Recusal.* A judge must recuse in any proceeding in which:
 - (1) the judge's impartiality might reasonably be questioned;
 - (2) the judge has a personal bias or prejudice concerning the subject matter or a party;
 - (3) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (4) the judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;

- (5) the judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
 - (6) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
 - (7) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (A) is a party to the proceeding or an officer, director, or trustee of a party;
 - (B) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - (C) is to the judge's knowledge likely to be a material witness in the proceeding; or
 - (8) the judge or the judge's spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.
- (c) *Financial Interests.* A judge should inform himself or herself about personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the household.
- (d) *Terminology and Standards.* In this rule:
- (1) "proceeding" includes pretrial, trial, or other stages of litigation;
 - (2) the degree of relationship is calculated according to the civil law system;
 - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

- (4) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
- (A) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;
 - (B) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;
 - (C) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (D) ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities; and
 - (E) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a “financial interest” unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to the judge within the third degree more than other judges.
- (e) *Waiving Ground for Recusal.* The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.
- (f) *Discovery and Divestiture.* If a judge does not discover that the judge is recused under subparagraph (b)(6) or (b)(7)(C) until after the judge has devoted substantial time to the matter, the judge is not required to recuse himself or herself if the judge or the person related to the judge divests himself or herself of the interest that would otherwise require recusal.

Comment to 2011 Change: Rule 18.1 — an amended version of former Rule 18a — governs the procedure for recusing or disqualifying a judge sitting in any trial court other than a statutory probate court or justice court. Chapter 25 of the Government Code governs statutory probate courts,

and Rule 528 governs justice courts. Under Rule 18.1, a judge's rulings may not be the sole basis for a motion to recuse or disqualify the judge. But when one or more sufficient other bases are raised, the judge hearing the motion may consider evidence of rulings when considering whether to grant the motion. For purposes of this rule, the term "rulings" is not meant to encompass a judge's statements or remarks about a case.

Rule 18.2 is former Rule 18b. The amendments are not intended to be substantive.