

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENT TO RULE 11,
RULES OF THE SUPREME COURT OF TENNESSEE

O R D E R

FILED

December 3, 1996

Cecil W. Crowson
Appellate Court Clerk

Rule 11, Rules of the Tennessee Supreme Court, is hereby amended by adding the following new section:

VII. Courts to be Open; Substitute Judges.

a. Pursuant to the inherent powers of the Supreme Court (see Art. I, § 1, Tennessee Constitution, Tenn. Code Ann. § 16-3-503, Tenn. Code Ann. § 16-3-504) and in discharge of the Court's responsibility to ensure the harmonious, efficient and uniform operation of the judicial system (see Tenn. Code Ann. § 16-3-501), this rule is adopted for the purpose of implementing the provisions of Tenn. Code Ann. § 16-2-509; § 16-3-502(2) and (3); § 17-2-118 and Tenn. Code Ann. § 17-2-201 et seq. and § 17-2-304 so as to accomplish the mandate of Art. I, § 17 of the Tennessee Constitution.¹

b. *Courts to be Open.* Art. I, § 17 of the Tennessee Constitution provides that "[a]ll courts shall be open; and every man for an injury . . . shall have remedy by due course of law, and right and justice administered without sale,

¹This rule is promulgated pursuant to the Court's rule making power. It is not an adjudication of the validity or meaning of any of these statutes, and it does not address the meaning, validity, or constitutionality of the statutes here pertinent.

denial, or delay." In furtherance of this constitutional mandate, it is the policy of the Tennessee Judicial Department that all courts of this state shall be open and available for the transaction of business except on Saturdays, Sundays, legal holidays, and during meetings of the Tennessee Judicial Conference required by law. This rule sets forth the procedure which shall be followed when a judge of a trial court of record is absent.

c. *Substitute Judges.* Where a judge of a trial court of record is incompetent to try any case pending before that judge, as provided in Tenn. Code Ann. § 17-2-202, or the judge of a trial court of record fails to attend or is unable to hold court, as provided in Tenn. Code Ann. § 17-2-118, the following procedure shall be followed, in the sequence designated, for the selection of a substitute judge.

(1) The judge shall seek interchange in accordance with Tenn. Code Ann. § 17-2-201 et seq.;

(2) The judge shall apply to the presiding judge of the judicial district to effect an interchange with a judge of that judicial district in accordance with Tenn. Code Ann. § 16-2-509(d);

(3) The presiding judge of the judicial district shall effect an interchange with a judge from another judicial district in accordance with Tenn. Code Ann. § 16-2-509(e);

(4) The presiding judge shall request from the director of the Administrative Office of the Courts the designation of a judge by the chief justice, in accordance with Tenn. Code Ann. § 16-3-502(3)(A) and 17-2-110.

d. Only if the procedures set forth above fail to provide a judge to preside over the docket or case will a judge appoint a lawyer to preside as a substitute judge pursuant to Tenn. Code Ann. § 17-2-118. Appointments pursuant to this section will conform to the following requirements:

(1) An attorney who is appointed substitute judge must possess all the qualifications of a judge, including the age and residency requirements; and the attorney must be in good standing under the rules of this Court. The substitute judge shall be subject to the applicable provisions of the Code of Judicial Conduct, including Canon 8.

(2) The substitute judge shall take an oath of office as provided in Tenn. Code Ann. § 17-2-120, and the substitute judge shall certify compliance with this rule by affixing his or her signature to the consent form which is appended to this rule.

(3) The authority of a substitute judge to fix fees pursuant to Tenn. Code Ann. § 17-2-118 is limited to cases in which the exact amount of the fee is set by statute.

(4) The substitute judge must ensure that all litigants who are present at the beginning of each proceeding

give their consent to the use of a substitute judge in their case. All litigants who are present at the beginning of the proceedings in a case and the attorneys of record for all parties who consent to the service of the substitute judge must complete Part B of the substitute judge consent form. Without such consent, the substitute judge shall not preside on that case. Part C of the substitute judge consent form must be completed by the substitute judge in each case on which that judge presides.

(5) The incompetent or absent judge must complete Part A of the substitute judge consent form. The judge must specify the reason for his or her incompetence or absence. If the judge cites absence for a cause other than a reason listed in Tenn. Code Ann. § 17-2-118(a), the specific reason for the absence must be set forth on the form.

(6) The clerk of the court shall certify that the appointment was made and that the substitute judge took the statutory oath of office and that the oath of office was filed in the clerk's office. The certification shall be made on Part D of the substitute judge consent form.

(7) At the end of each month, all substitute judge consent forms will be transmitted by the presiding judge of the judicial district to the Administrative Office of the Courts, Suite 600, Nashville City Center, 511 Union Street, Nashville, Tennessee 37243-0607, where they will be available for public inspection during regular business hours. Such forms shall be

maintained on file at the Administrative Office of the Courts
for at least eight (8) years after they are received.

e. This rule shall become effective on December 9, 1996.

ENTER this 3rd day of December, 1996.

FOR THE COURT:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE