

CHAPTER 11
CHANGE OF JUDGE FOR CIVIL AND
CRIMINAL CASES
Trial Rules 76 and 79

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A change of judge in a civil case can arise in two basic scenarios: (1) a motion for change of judge under [Trial Rule 76](#), and (2) disqualification or recusal under [Trial Rule 79](#)(C).

Prior to July 1, 1995, upon the recusal of a judge, a special judge was selected either by certifying the matter to the Supreme Court or by the recusing judge naming a three member panel from which the parties struck. Effective July 1, 1995, the selection process was changed, and selection of a special judge was accomplished pursuant to local rule. This procedure was further refined, effective February 1, 1996, to permit parties to either agree upon a special judge or to allow the recusing judge to name a special judge.

Today, though the ability of a recusing judge to name a striking panel has long since ended, some judges are still caught unawares.

The process for selecting a special judge pursuant to a change of judge or a recusal is now different. The chart below lays out the steps:

Trial Rule 76 - Change of Judge	Trial Rule 79 - Recusal
1. T.R. 79(D): Selection by agreement of the parties	1. T.R. 79(D): Selection by agreement of the parties
2. T.R. 79(E): With the agreement of the parties, selection by trial judge	2. T.R. 79(E): With the agreement of the parties, selection by trial judge
3. T.R. 79(F): Striking panel. The selected judge is not required to accept the case	
4. T.R. 79(H): Local Rule. The selected judge must accept the case unless disqualified, ineligible or excused	3. T.R. 79(H): Local Rule. The selected judge must accept the case unless disqualified, ineligible or excused.

It is important to note that selection of a special judge due to disqualification or recusal is only a three-step process and does not utilize a striking panel. The most common error made by a recusing judge is to name a striking panel for the selection of a special judge, rather than, in the absence of an agreement, referring to the county's local rule.

If a special judge is not obtained pursuant to local rule, or if the particular circumstances of the case warrant, the case may be certified to the Supreme Court for the appointment of a special judge.

Change of Judge for Criminal Cases

A change of judge in a criminal case is controlled by [Criminal Rule 13](#). In counties with four or more judges who receive felony or misdemeanor cases, a special judge is selected in the same manner used to select the original judge. In counties with fewer than four judges, the local rule required by [Criminal Rule 2.2](#) must include an alternative assignment list with judges from contiguous counties and senior judges assigned to the court. Criminal Rule 13(C).

Where no judge is available for appointment under local rule or the particular circumstances of the case warrant, a trial judge may request the Supreme Court to appoint a special judge.

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