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Sequence Number: 10-06-19  
 Rule ID(s): 9260  
 File Date: 10/7/19  
 Last Effective Day: 4/4/20

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

**Agency/Board/Commission:** Board of Judicial Conduct  
**Division:** N/A  
**Contact Person:** Judge Dee David Gay  
**Address:** Sumner County Criminal Justice Center, 1117 West Smith Street, Gallatin TN  
**Zip:** 37066  
**Phone:** (615) 452-5526  
**Email:** [Judge.dee.gay@tncourts.gov](mailto:Judge.dee.gay@tncourts.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Public Chapter 496 of the 111th General Assembly—codified as Tenn. Code Ann. §§ 17-5-101, *et seq.*—reconstituted the Tennessee Board of Judicial Conduct effective July 1, 2019. As the reconstituted Board came into existence on July 1, 2019, it did not have time to promulgate these rules in a non-emergency fashion. The Board is unable to perform its functions without these emergency rules, and “[t]he regulation of judicial conduct is critical to preserving the integrity of the judiciary and enhancing public confidence in the judicial system.” Tenn. Code Ann. § 17-5-101.

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
-01	General
Rule Number	Rule Title
-01-.01	Meetings
-01-.02	Chairperson and Vice-Chair of the Board
-01-.03	Confidentiality
-01-.04	Records Retention

**-01-.01 MEETINGS.**

- (1) TIME AND PLACE OF MEETING – The Board shall meet at 10:00 am on the fourth (4th) Tuesday in February and the fourth (4th) Tuesday in July in the conference room of the Administrative Office of the Courts and at such other times and places as the chairperson or a majority of the members of the Board may deem necessary. Members finding it more convenient may also attend the meeting by video or phone conference.
- (2) NOTICE OF MEETING – The chairperson shall give a minimum of ten (10) days' notice of the time and place of meetings to all members of the Board.
- (3) QUORUM – Nine (9) members of the Board, whether meeting in person or by video or phone conference, shall constitute a quorum.

Authority: T.C.A. § 17-5-201(f).

**-01-.02 CHAIRPERSON AND VICE-CHAIR OF THE BOARD.**

- (1) CHAIRPERSON ELECTION AND REMOVAL – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a chairperson to serve for a period of one (1) year. The chairperson shall be elected from the members of the Board by a majority present and voting. The chairperson may be removed by a two-thirds vote of the members of the Board, with or without cause.
- (2) VICE-CHAIR ELECTION, REMOVAL, AND DUTIES – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a vice-chair to serve for a period of one (1) year. The vice-chair shall be elected from the members of the Board by a majority present and voting. The vice-chair may be removed by a two-thirds vote of the members of the Board, with or without cause. If at any meeting the chairperson is not present, the vice-chair shall act as chairperson for that meeting. If the chairperson is recused with respect to a matter, the vice-chair shall act as chairperson with respect to that matter.
- (3) CHAIRPERSON DUTIES – In addition to the duties and responsibilities set forth in T.C.A. §§ 17-5-101, *et seq.*, the Chairperson shall preside at all meetings of the Board and at trials. The chairperson shall rule upon the admission or exclusion of evidence. However, the chairperson's ruling upon the admission or exclusion of evidence may be appealed to the full hearing panel. The chairperson and only the chairperson shall be the spokesperson for all matters pending before the Board, except that if the chairperson is recused with respect to a matter pending before the Board, the vice-chair and only the vice-chair shall be the spokesperson for the Board with respect to that matter. After the trial of any matter, the chairperson shall write or shall designate a member of the hearing panel that heard the matter to write the majority opinion. Any member of the hearing panel that heard the matter may write a concurring or dissenting opinion. The chairperson shall have such other duties and responsibilities as are necessary in fulfilling the office.

Authority: T.C.A. § 17-5-201(f).

**-01-.03 CONFIDENTIALITY.**

- (1) Except as required under T.C.A. § 17-5-303(f), matters that come before the Board are confidential. Individual members of the Board will not discuss any matter pending before the Board, except with other members of the Board and with the Board's disciplinary counsel. However, nothing in this rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding before the Board or from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute, or may adversely affect the administration of justice, the chairperson in his or her discretion may (a) confirm that an investigation is in progress, (b) clarify the procedural aspects of any proceedings, and (c) explain the rights of the subject of the investigation to a fair hearing without prejudgment.

Authority: T.C.A. §§ 17-5-201(f), -202(e), -303(f).

**-01-.04 RECORDS RETENTION.**

When a complaint is received from an outside source or is created internally, both a physical and an electronic file shall be created. The physical file shall contain the complaint and all relevant documentation and correspondence pertaining to the complaint. Relevant portions of all complaints and documentation, including correspondence, shall be scanned and maintained in the electronic file. Correspondence generated by the office to either the complainant or the subject judge shall also be maintained in an electronic file in word-processing format, without the necessity of scanning the printed document. Voluminous public records such as transcripts, court dockets, or pleadings filed in any court, which are retrievable by other means, need not be scanned into the electronic file. The Board's disciplinary counsel shall maintain a backup copy of all electronic files that shall be backed up daily and kept on storage media apart from the computer's internal hard drive. A physical file may be destroyed by an appropriately secure method, such as a commercial shredding service, no sooner than one (1) year after the final action and closing of that file, but the electronic file shall never be destroyed, regardless of the disposition of the case.

Authority: T.C.A. §§ 17-5-201(f). -202(e).

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dee David Gay	X				
Andrew G. Brigham	X				
Jeffrey M. Atherton	X				
H. Allen Bray				X	
Robert Carter, Jr.	X				
Edwena I. Crowe	X				
Rita Ellison	X				
William C. Koch, Jr.	X				
Carnille R. McMillen	X				
Albert Mosley	X				
Benjamin Purser, Jr.	X				
Richard Rogers	X				
Dan Springer	X				
Terica Smith	X				
John Whitworth	X				
Robert W. Wilkinson	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: Oct 4 2019

Signature: [Signature]

Name of Officer: Dee David Gay

Title of Officer: Criminal Court Judge



Subscribed and sworn to before me on: October 4, 2019

Notary Public Signature: [Signature]

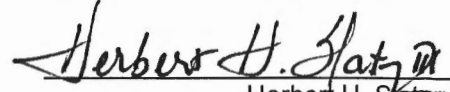
My commission expires on: 12/21/19

Agency/Board/Commission: Board of Judicial Conduct

Agency/Board/Commission: Board of Judicial Conduct

Rule Chapter Number(s): Need chapter assigned, -01 General

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatery III  
Attorney General and Reporter  
9/11/2019  
Date

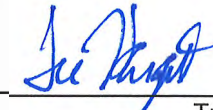
**Department of State Use Only**

Filed with the Department of State on: 10/7/19

Effective for: 180 \*days

Effective through: 4/4/20

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

  
Tre Hargett  
Secretary of State

RECEIVED  
2019 OCT -7 PM 2:15  
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PUBLICATIONS

## Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These emergency rules will have a minimal impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The 111th General Assembly reconstituted the Board of Judicial Conduct effective July 1, 2019. 2019 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.* These rules govern general procedures of the Board.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

2019 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.*)

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules most directly effect Tennessee's judiciary. The Board has received no objections to these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Board of Judicial Conduct does not expect that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Board also believes that its fiscal impact is minimal.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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1117 West Smith Street  
Gallatin, Tennessee 37066  
(615) 452-5526  
[Judge.Dee.Gay@tncourts.gov](mailto:Judge.Dee.Gay@tncourts.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

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- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.