

Recusal and Transferring of Cases

We continue to receive questions about this topic so I felt it was important to address this again.

It has long been the practice in many counties for Court Clerks to send a letter advising the County Court, that all Justices in the presiding Justice Court did recuse themselves from a pending case, and that a matter must be reassigned to a Court in neighboring jurisdiction. I would like advise that this procedure is not in accordance with the statutes and may also have appellate consequences.¹

1. Transferring Cases after Recusal:

A. Criminal Cases: When all Justices recuse themselves from a criminal matter pending in the Justice Court, pursuant to Criminal Procedure Law Section 170.15(3), a motion to remove an action from one local criminal court to another criminal court, **must be made by the defendant or the people**, only after the defendant has been arraigned on the accusatory instrument in the local criminal court where the accusatory instrument has been filed. Therefore, please be advised, that sending a letter to the County Court requesting that a case be transferred because of recusal, is insufficient. The letter advising of recusal and a copy of the recusal should be distributed to the parties, which provides a basis for the parties to request that the case be transferred to a neighboring jurisdiction. Also, please be mindful of Defendant's right to a Speedy Trial, CPL § 30.30.

If you know you are going to recuse yourself from a pending criminal case you should not perform the arraignment. However, the matter cannot be transferred out of your Court until the arraignment has been performed. In cases where an appearance ticket has been given the arraignment does not occur until the first Court appearance, if you know you are going to recuse do not perform the arraignment.

Ethics Opinion: ATTACHMENT.

If all justices are going to recuse prior to arraignment a neighboring justice must be assigned to your Court for the purpose of performing the arraignment. In that situation, the Clerk of the Court should contact the Administrative Judge's Office in writing with the following information:

1. Name of the Defendant
2. Copy of recusal(s)
3. Name of a Justice and the Court elected/appointed to who is willing to volunteer to cover the arraignment. The Court Clerk should locate the Judge who is willing to volunteer.

In Dutchess County, the process differs. The Court Clerk should not locate a judge. Rather, items 1 and 2 should be sent to the Dutchess County Court to the attention of either Wayne Witherwax or Christi Acker and then a justice will be located by them and the matter will then be sent to the Administrative Judge's Office for appointment.

B. Civil Cases: When all Justices recuse themselves from a civil matter pending in the Justice Court, pursuant to CPLR Section 325(g), a motion to remove an action from one local court to another shall be made by "**any party to such action or proceeding**".

Therefore, you should provide a copy of the Affidavit of Disqualification to the parties so they may take the appropriate action and request a transfer of their matter to an appropriate jurisdiction.



JUSTICES RECUSE

*Please be aware that defendants in civil and criminal matters may not be aggressive in having their matter transferred to an appropriate jurisdiction because a delay in time may benefit them.

C. Real Property Cases: Cases involving summary proceedings of real property may not be transferred outside of the jurisdiction of where the property is located. *See*, UJCA § 204. Therefore, if Justices recuse themselves from hearing a real property matter, if no judge is available to hear the matter in the Town in which the property is located, in accordance with UCJA § 106 the proper procedure is to have a judge assigned to hear that case. In sum, a Justice from a neighboring jurisdiction must hear the case in the Justice Court where the real property is located. *See, Arcate v. Hole in the Wall Gang, Ltd.*, 686 N.Y.S2d 268 (App. Div. 2nd Dep't 1999).

To assist the Administrative Judge's Office in making an assignment, please find a justice who is willing to be assigned to hear the matter in your Justice Court. Thereafter, you should contact Judge Scheinkman's chambers in writing with the following information:

1. Names of the parties.
2. Copy of recusal(s).
3. Name of a Justice and the Court elected/appointed to who is willing to volunteer to cover the arraignment. The Court Clerk should locate the Judge who is willing to volunteer.

In Dutchess County, the process differs. The Court Clerk should not locate a judge. Rather, items 1 and 2 should be sent to the Dutchess County Court to the attention of either Wayne Witherwax or Christi Acker and then a justice will be located by them. The information will then be sent to the Administrative Judge's Office for appointment.

Upon receipt of the information above, an order shall be issued designating the named justice as acting justice for the purposes of hearing the named case.

Administrative Judge's Office Address:

Honorable Alan D. Scheinkman
Administrative Judge's Office, 11th floor
Westchester County Courthouse
111 Dr. Martin Luther King Blvd.
White Plains, NY 10601



¹ *In the Matter of Clyde Rodgers v. Roger Crumb*, 242 AD2d 874, App. Div. 4th Dep't (1997)

(Petitioner properly moved in County Court to transfer the proceeding because both Town Court Judges had disqualified themselves from hearing the matter-citing CPLR 325(g)); *Arcate v. Hole in the Wall Gang*, 179 Misc. 2d 520, App. Term 2nd Dep't (1999)

Justice Court has jurisdiction over real property only located whole or in part within the municipality-UJCA 204. As a result, The Justice Court in the Town of Riverhead does not have jurisdiction over a summary proceeding to recover possession of real property which is located entirely within the Town of Southampton. Nor does the removal provision pursuant to which the proceeding was transferred (CPLR 3259g) confer any additional jurisdiction upon the transferee court; *Benben v. DiMartini*, 791 NYS2d 868, Sup. Ct. App. Term (2004)(not published in the official reports) Justice Court does not have jurisdiction over a summary proceeding to recover possession of real property, when the real property is not located within its jurisdiction; *People v. Alteri*, 835 NYS2d 869 Cty Ct NY Cty (2007) Narrative of history of case removal of an action from justice court, accomplished by People filing a motion in accordance with CPL 170.15(3).