

1-1 By: Naishtat (Senate Sponsor - Wentworth) H.B. No. 1539
1-2 (In the Senate - Received from the House April 28, 2003;
1-3 May 1, 2003, read first time and referred to Committee on
1-4 Jurisprudence; May 14, 2003, reported favorably by the following
1-5 vote: Yeas 6, Nays 0; May 14, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to associate judges for statutory probate courts.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. The heading to Chapter 54, Government Code, is
1-11 amended to read as follows:

1-12 CHAPTER 54. MASTERS; MAGISTRATES; REFEREES; ASSOCIATE JUDGES

1-13 SECTION 2. The heading to Subchapter G, Chapter 54,
1-14 Government Code, is amended to read as follows:

1-15 SUBCHAPTER G. STATUTORY PROBATE COURT ASSOCIATE JUDGES [~~MASTERS~~]

1-16 SECTION 3. Sections 54.602-54.614, Government Code, are
1-17 amended to read as follows:

1-18 Sec. 54.602. APPLICATION. This subchapter does not apply
1-19 to the statutory probate courts of:

1-20 (1) Dallas County; or

1-21 (2) Harris County, except Probate Court No. 1.

1-22 Sec. 54.603. APPOINTMENT. (a) After obtaining the
1-23 approval of the commissioners court, the judge of a statutory
1-24 probate court by order may appoint a person to act as associate
1-25 judge [~~probate master~~] for the statutory probate court.

1-26 (b) The commissioners court may authorize the appointment
1-27 of an associate judge [~~a probate master~~] for each court or may
1-28 authorize one or more associate judges [~~probate masters~~] to share
1-29 service with two or more courts, if more than one statutory probate
1-30 court exists in a county.

1-31 (c) If an associate judge [~~a probate master~~] serves more
1-32 than one court, the associate judge's [~~probate master's~~]
1-33 appointment must be made with the unanimous approval of all the
1-34 judges under whom the associate judge [~~probate master~~] serves.

1-35 (d) An associate judge [~~A probate master~~] must meet the
1-36 qualifications to serve as a judge of the court to which the
1-37 associate judge is appointed.

1-38 (e) An associate judge [~~A probate master~~] appointed under
1-39 this subchapter may serve as a master appointed under Section
1-40 574.0085, Health and Safety Code.

1-41 Sec. 54.604. TERMINATION OF ASSOCIATE JUDGE [~~PROBATE~~
1-42 ~~MASTER~~]. (a) An associate judge [~~A probate master~~] who serves a
1-43 single court serves at the will of the judge of that court.

1-44 (b) The employment of an associate judge [~~a probate master~~]
1-45 who serves more than two courts may only be terminated by a majority
1-46 vote of all the judges of the courts that the associate judge
1-47 [~~probate master~~] serves.

1-48 (c) The employment of an associate judge [~~a probate master~~]
1-49 who serves two courts may be terminated by either of the judges of
1-50 the courts that the associate judge [~~probate master~~] serves.

1-51 (d) The appointment of the associate judge [~~probate master~~]
1-52 terminates if:

1-53 (1) the appointing judge vacates the judge's office;

1-54 (2) the associate judge [~~probate master~~] becomes a
1-55 candidate for election to public office; or

1-56 (3) the commissioners court does not appropriate funds
1-57 in the county's budget to pay the salary of the associate judge
1-58 [~~probate master~~].

1-59 Sec. 54.605. COMPENSATION. (a) An associate judge [~~A~~
1-60 ~~probate master~~] is entitled to the compensation set by the
1-61 appointing judge and approved by the commissioners court. The
1-62 salary of the associate judge [~~probate master~~] may not exceed the
1-63 salary of the appointing judge.

1-64 (b) The compensation of the associate judge [~~probate~~

2-1 ~~master~~] shall be paid by the county from the county general fund in
2-2 the same manner that the appointing judge's salary is paid.

2-3 Sec. 54.606. OATH. An associate judge [~~A probate master~~]
2-4 must take the constitutional oath of office required of appointed
2-5 officers of this state.

2-6 Sec. 54.607. MAGISTRATE. An associate judge [~~A probate~~
2-7 ~~master~~] appointed under this subchapter is a magistrate.

2-8 Sec. 54.608. CASES THAT MAY BE REFERRED. (a) Except as
2-9 provided by this section, a judge of a court may refer to an
2-10 associate judge [~~a probate master~~] any aspect of a suit over which
2-11 the probate court has jurisdiction, including any matter ancillary
2-12 to the suit.

2-13 (b) Unless a party files a written objection to the
2-14 associate judge [~~probate master~~] hearing a trial on the merits, the
2-15 judge may refer the trial to the associate judge [~~probate master~~].
2-16 A trial on the merits is any final adjudication from which an appeal
2-17 may be taken to a court of appeals.

2-18 (c) A party must file an objection to an associate judge [~~a~~
2-19 ~~probate master~~] hearing a trial on the merits or presiding at a jury
2-20 trial not later than the 10th day after the date the party receives
2-21 notice that the associate judge [~~probate master~~] will hear the
2-22 trial. If an objection is filed, the referring court shall hear the
2-23 trial on the merits or preside at a jury trial.

2-24 [~~(d) Unless all parties consent in writing to a probate~~
2-25 ~~master hearing a contested trial on the merits of a lawsuit in which~~
2-26 ~~the referring court's jurisdiction is concurrent with the district~~
2-27 ~~court in the county of the referring court, the matter must be tried~~
2-28 ~~by the referring court. In a lawsuit in which the referring court's~~
2-29 ~~jurisdiction is concurrent with the district court, any order~~
2-30 ~~rendered under a probate master's report is void if the parties do~~
2-31 ~~not consent in writing to the probate master conducting the trial on~~
2-32 ~~the merits.~~

2-33 [~~(e) If a jury trial is demanded and a jury fee paid in a~~
2-34 ~~trial on the merits, the probate master shall refer any matters~~
2-35 ~~requiring a jury back to the referring court for a trial before the~~
2-36 ~~referring court and jury.]~~

2-37 Sec. 54.609. ORDER OF REFERRAL. (a) In referring a case to
2-38 an associate judge [~~a probate master~~], the judge of the referring
2-39 court shall render:

2-40 (1) an individual order of referral; or
2-41 (2) a general order of referral specifying the class
2-42 and type of cases to be heard by the associate judge [~~probate~~
2-43 ~~master~~].

2-44 (b) The order of referral may limit the power or duties of an
2-45 associate judge [~~a probate master~~].

2-46 Sec. 54.610. POWERS OF ASSOCIATE JUDGE [~~PROBATE MASTER~~].
2-47 Except as limited by an order of referral, an associate judge [~~a~~
2-48 ~~probate master~~] may:

2-49 (1) conduct a hearing;
2-50 (2) hear evidence;
2-51 (3) compel production of relevant evidence;
2-52 (4) rule on the admissibility of evidence;
2-53 (5) issue a summons for the appearance of witnesses;
2-54 (6) examine a witness;
2-55 (7) swear a witness for a hearing;
2-56 (8) make findings of fact on evidence;
2-57 (9) formulate conclusions of law;
2-58 (10) recommend an order to be rendered in a case;
2-59 (11) regulate all proceedings in a hearing before the
2-60 associate judge [~~probate master~~]; and
2-61 (12) take action as necessary and proper for the
2-62 efficient performance of the associate judge's [~~probate master's~~]
2-63 duties.

2-64 Sec. 54.611. ATTENDANCE OF BAILIFF. A bailiff shall attend
2-65 a hearing conducted by an associate judge [~~a probate master~~] if
2-66 directed to attend by the referring court.

2-67 Sec. 54.612. COURT REPORTER. (a) A court reporter is not
2-68 required during a hearing held by an associate judge [~~a probate~~
2-69 ~~master~~] appointed under this subchapter unless required by other

3-1 law.

3-2 (b) A party, the associate judge [~~probate master~~], or the
3-3 referring court may provide for a reporter during the hearing.

3-4 (c) The record of a hearing before an associate judge [~~a~~
3-5 ~~probate master~~] may be preserved by any means approved by the
3-6 referring court.

3-7 (d) The referring court or associate judge [~~probate master~~]
3-8 may impose on a party the expense of preserving the record as a
3-9 court cost.

3-10 Sec. 54.613. WITNESS. (a) A witness appearing before an
3-11 associate judge [~~a probate master~~] is subject to the penalties for
3-12 perjury provided by law.

3-13 (b) A referring court may fine or imprison a witness who:

3-14 (1) fails to appear before an associate judge [~~a~~
3-15 ~~probate master~~] after being summoned; or

3-16 (2) improperly refuses to answer a question if the
3-17 refusal has been certified to the court by the associate judge
3-18 [~~probate master~~].

3-19 Sec. 54.614. REPORT. (a) The associate judge's [~~probate~~
3-20 ~~master's~~] report may contain the associate judge's [~~probate~~
3-21 ~~master's~~] findings, conclusions, or recommendations. The
3-22 associate judge [~~probate master~~] shall prepare a written report in
3-23 the form directed by the referring court. The form may be a
3-24 notation on the referring court's docket sheet.

3-25 (b) After a hearing, the associate judge [~~probate master~~]
3-26 shall provide the parties participating in the hearing notice of
3-27 the substance of the associate judge's [~~probate master's~~] report.

3-28 (c) Notice may be given to the parties:

3-29 (1) in open court, by an oral statement or a copy of
3-30 the associate judge's [~~probate master's~~] written report; or

3-31 (2) by certified mail, return receipt requested.

3-32 (d) The associate judge [~~probate master~~] shall certify the
3-33 date of mailing of notice by certified mail. Notice is considered
3-34 given on the third day after the date of mailing.

3-35 (e) After a hearing conducted by an associate judge [~~a~~
3-36 ~~probate master~~], the associate judge [~~probate master~~] shall send
3-37 the associate judge's [~~probate master's~~] signed and dated report
3-38 and all other papers relating to the case to the referring court.

3-39 SECTION 4. Section 54.615(a), Government Code, is amended
3-40 to read as follows:

3-41 (a) An associate judge [~~A probate master~~] shall give all
3-42 parties notice of the right of appeal to the judge of the referring
3-43 court.

3-44 SECTION 5. Sections 54.616 and 54.617, Government Code, are
3-45 amended to read as follows:

3-46 Sec. 54.616. ORDER OF COURT. (a) Pending appeal of the
3-47 associate judge's [~~probate master's~~] report to the referring court,
3-48 the decisions and recommendations of the associate judge's [~~probate~~
3-49 ~~master's~~] report have the force and effect, and are enforceable as,
3-50 an order of the referring court, except for orders providing for
3-51 incarceration or for the appointment of a receiver.

3-52 (b) If an appeal to the referring court is not filed or the
3-53 right to an appeal to the referring court is waived, the findings
3-54 and recommendations of the associate judge [~~probate master~~] become
3-55 the order of the referring court at the time the judge of the
3-56 referring court signs an order conforming to the associate judge's
3-57 [~~probate master's~~] report.

3-58 Sec. 54.617. JUDICIAL ACTION ON ASSOCIATE JUDGE'S [~~A~~
3-59 ~~MASTER'S~~] REPORT. Unless a party files a written notice of appeal,
3-60 the referring court may:

3-61 (1) adopt, modify, or reject the associate judge's
3-62 [~~probate master's~~] report;

3-63 (2) hear further evidence; or

3-64 (3) recommit the matter to the associate judge
3-65 [~~probate master~~] for further proceedings.

3-66 SECTION 6. Sections 54.618(a), (b), and (g), Government
3-67 Code, are amended to read as follows:

3-68 (a) A party may appeal an associate judge's [~~a probate~~
3-69 ~~master's~~] report by filing notice of appeal not later than the third

4-1 day after the date the party receives notice of the substance of the
4-2 associate judge's [~~probate master's~~] report as provided by Section
4-3 54.614.

4-4 (b) An appeal to the referring court must be made in writing
4-5 and specify the findings and conclusions of the associate judge
4-6 [~~probate master~~] to which the party objects. The appeal is limited
4-7 to the findings and conclusions specified in the written appeal.

4-8 (g) Before the start of a hearing conducted by an associate
4-9 judge [~~a probate master~~], the parties may waive the right of appeal
4-10 to the referring court. The waiver may be in writing or on the
4-11 record.

4-12 SECTION 7. Section 54.619(a), Government Code, is amended
4-13 to read as follows:

4-14 (a) Failure to appeal to the referring court, by waiver or
4-15 otherwise, the approval by the referring court of an associate
4-16 judge's [~~a probate master's~~] report does not deprive a party of the
4-17 right to appeal to or request other relief from a court of appeals
4-18 or the supreme court.

4-19 SECTION 8. Section 54.620, Government Code, is amended to
4-20 read as follows:

4-21 Sec. 54.620. IMMUNITY. An associate judge [~~A probate~~
4-22 ~~master~~] appointed under this subchapter has the judicial immunity
4-23 of a probate judge. All existing immunity granted an associate
4-24 judge [~~a probate master~~] by law, express or implied, continues in
4-25 full force and effect.

4-26 SECTION 9. Article 2.09, Code of Criminal Procedure, is
4-27 amended to read as follows:

4-28 Art. 2.09. WHO ARE MAGISTRATES. Each of the following
4-29 officers is a magistrate within the meaning of this Code: The
4-30 justices of the Supreme Court, the judges of the Court of Criminal
4-31 Appeals, the justices of the Courts of Appeals, the judges of the
4-32 District Court, the magistrates appointed by the judges of the
4-33 district courts of Bexar County, Dallas County, Tarrant County, or
4-34 Travis County that give preference to criminal cases, the criminal
4-35 law hearing officers for Harris County appointed under Subchapter
4-36 L, Chapter 54, Government Code, the magistrates appointed by the
4-37 judges of the district courts of Lubbock County or Webb County, the
4-38 magistrates appointed by the judges of the criminal district courts
4-39 of Dallas County or Tarrant County, the masters appointed by the
4-40 judges of the district courts and the county courts at law that give
4-41 preference to criminal cases in Jefferson County, the magistrates
4-42 appointed by the judges of the district courts and the statutory
4-43 county courts of Williamson County, the county judges, the judges
4-44 of the county courts at law, judges of the county criminal courts,
4-45 the judges of statutory probate courts, the associate judges
4-46 [~~masters~~] appointed by the judges of the statutory probate courts
4-47 under Subchapter G, Chapter 54, Government Code, the justices of
4-48 the peace, the mayors and recorders and the judges of the municipal
4-49 courts of incorporated cities or towns.

4-50 SECTION 10. A reference in law to a probate master appointed
4-51 under Subchapter G, Chapter 54, Government Code, means an associate
4-52 judge of a statutory probate court appointed under that subchapter.

4-53 SECTION 11. This Act takes effect September 1, 2003.

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