

1-1 By: Guillen (Senate Sponsor - Zaffirini) H.B. No. 3304
1-2 (In the Senate - Received from the House May 7, 2003;
1-3 May 9, 2003, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 21, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3304 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the appointment and duties of an associate judge in the
1-11 229th Judicial District.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 54, Government Code, is amended by
1-14 adding Subchapter V to read as follows:

1-15 SUBCHAPTER V. ASSOCIATE JUDGES IN DUVAL COUNTY

1-16 Sec. 54.1131. APPOINTMENT. The judge of the 229th District
1-17 Court, with the approval of the Commissioners Court of Duval
1-18 County, may appoint a full-time or a part-time associate judge to
1-19 perform the duties authorized by this subchapter.

1-20 Sec. 54.1132. QUALIFICATIONS. To be eligible for
1-21 appointment as an associate judge, a person must:

1-22 (1) be a resident of this state and Duval County; and

1-23 (2) meet the requirements and qualifications to serve
1-24 as a judge of the court to which the person is appointed.

1-25 Sec. 54.1133. COMPENSATION. (a) An associate judge is
1-26 entitled to the compensation set by the Duval County Commissioners
1-27 Court.

1-28 (b) The salary shall be paid from the county fund available
1-29 for payments of officers' salaries.

1-30 (c) This section does not apply to an associate judge
1-31 appointed under Section 201.001, Family Code.

1-32 Sec. 54.1134. PRIVATE PRACTICE. A part-time associate
1-33 judge may engage in the private practice of law, unless restricted
1-34 on a finding that it is not in the public interest by the appointing
1-35 judge.

1-36 Sec. 54.1135. TERMINATION OF SERVICES. (a) An associate
1-37 judge serves at the will of the judge of the 229th District Court.

1-38 (b) This section does not apply to an associate judge
1-39 appointed under Section 201.001, Family Code.

1-40 Sec. 54.1136. REFERRAL OF CASE. (a) The appointing judge
1-41 may refer to an associate judge any aspect of a civil or criminal
1-42 case involving a matter over which the referring court has
1-43 jurisdiction in Duval County.

1-44 (b) After notice to all parties of the time and place of
1-45 hearing, an associate judge may preside over any hearing,
1-46 including:

1-47 (1) for a civil case, proceedings involving:

1-48 (A) a temporary order in an action or suit for
1-49 support by one spouse against another;

1-50 (B) a motion or suit to modify a temporary or
1-51 final order;

1-52 (C) temporary orders in a suit affecting the
1-53 parent-child relationship;

1-54 (D) an application for a temporary injunction
1-55 related to temporary possession or use of property;

1-56 (E) habeas corpus, including any hearing
1-57 authorized by the Family Code;

1-58 (F) a motion to transfer;

1-59 (G) a motion of contempt for failure or refusal
1-60 to obey a temporary or final order;

1-61 (H) an action brought under Chapter 159, Family
1-62 Code;

1-63 (I) an action for the protection of the family;

2-1 (J) a matter on which the parties agree;
2-2 (K) a matter in which a party is entitled to a
2-3 default judgment;
2-4 (L) a divorce action in which a waiver of
2-5 citation is on file;
2-6 (M) a friendly suit; and
2-7 (N) any other matter in the jurisdiction of the
2-8 court, including a pretrial motion, discovery, summary judgment,
2-9 and other matters governed by the Texas Rules of Civil Procedure;
2-10 and
2-11 (2) for a criminal case, proceedings involving:
2-12 (A) a negotiated plea of guilty or nolo
2-13 contendere;
2-14 (B) a bond forfeiture;
2-15 (C) a pretrial motion;
2-16 (D) a postconviction writ of habeas corpus;
2-17 (E) an examining trial; and
2-18 (F) any other matter that the judge considers
2-19 proper.
2-20 (c) A judge may not refer to an associate judge any criminal
2-21 case for trial on the merits in which a jury trial has been
2-22 requested.
2-23 (d) Unless a party files a written objection to the
2-24 associate judge hearing the trial, the appointing judge may refer
2-25 to an associate judge a trial on the merits. If an objection is
2-26 filed, the trial on the merits shall be heard by the referring
2-27 court.
2-28 (e) A trial on the merits is a final adjudication from which
2-29 an appeal may be taken to a court of appeals.
2-30 (f) An associate judge may not conduct a contested trial on
2-31 the merits to terminate parental rights unless the affected parties
2-32 give written consent to the contested trial by the associate judge.
2-33 Unless written consent is given by the affected parties to a
2-34 contested trial on the merits, any order terminating parental
2-35 rights issued pursuant to an associate judge's report resulting
2-36 from the contested trial is void.
2-37 (g) On appointment of an associate judge, any pending or
2-38 future cases may be referred to the associate judge.
2-39 Sec. 54.1137. ORDER OF REFERRAL. (a) To refer cases to an
2-40 associate judge, the referring court must issue an order of
2-41 referral.
2-42 (b) The order of referral may limit the power or duties of an
2-43 associate judge.
2-44 Sec. 54.1138. POWERS. Except as limited by an order of
2-45 referral, an associate judge may:
2-46 (1) conduct a hearing;
2-47 (2) hear evidence;
2-48 (3) compel production of relevant evidence;
2-49 (4) rule on admissibility of evidence;
2-50 (5) issue summons for the appearance of witnesses;
2-51 (6) examine witnesses;
2-52 (7) swear witnesses for hearings;
2-53 (8) make findings of fact on evidence;
2-54 (9) formulate conclusions of law;
2-55 (10) recommend the judgment to be made in a case;
2-56 (11) regulate all proceedings in a hearing before the
2-57 associate judge;
2-58 (12) rule on all criminal pretrial motions; and
2-59 (13) perform any act and take any measure necessary
2-60 and proper for the efficient performance of the associate judge's
2-61 duties.
2-62 Sec. 54.1139. ATTENDANCE OF BAILIFF. A bailiff shall
2-63 attend a hearing held by an associate judge if directed by the
2-64 referring court.
2-65 Sec. 54.1140. WITNESS. (a) A witness appearing before an
2-66 associate judge is subject to the penalties for perjury provided by
2-67 law.
2-68 (b) A referring court may issue attachment against and may
2-69 fine or imprison a witness whose failure to appear before an

3-1 associate judge after being summoned or whose refusal to answer
3-2 questions has been certified to the court.

3-3 Sec. 54.1141. REPORT TRANSMITTED TO COURT; NOTICE. (a) At
3-4 the conclusion of any hearing conducted by an associate judge and on
3-5 the preparation of an associate judge's report, the associate judge
3-6 shall transmit to the referring court:

3-7 (1) all papers relating to the case; and

3-8 (2) the associate judge's signed and dated report.

3-9 (b) After the associate judge's report has been signed, the
3-10 associate judge shall give notice of the substance of the report to
3-11 the parties participating in the hearing.

3-12 (c) The associate judge's report may contain the associate
3-13 judge's finding, conclusions, or recommendations. The associate
3-14 judge's report must be in writing in a form as the referring court
3-15 may direct. The form may be a notation on the referring court's
3-16 docket sheet.

3-17 (d) The notice required under Subsection (b) may be given in
3-18 open court or may be given by certified mail, return receipt
3-19 requested. If the notice is given by certified mail, the associate
3-20 judge shall certify the date of mailing and the notice is considered
3-21 to have been given on the third day after the date of mailing.

3-22 Sec. 54.1142. NOTICE OF RIGHT TO APPEAL. An associate judge
3-23 shall give all parties notice of the right of appeal to the judge of
3-24 the referring court. The notice may be given:

3-25 (1) at the hearing;

3-26 (2) by posting the notice inside or outside the
3-27 courtroom of the referring court; or

3-28 (3) as otherwise directed by the referring court.

3-29 Sec. 54.1143. EFFECT OF ASSOCIATE JUDGE'S REPORT PENDING
3-30 APPEAL. Pending appeal of the associate judge's report to the
3-31 referring court, the decisions and recommendations of the associate
3-32 judge are in full force and effect and are enforceable as an order
3-33 of the referring court, except for the orders providing for
3-34 incarceration or for the appointment of a receiver.

3-35 Sec. 54.1144. JUDICIAL ACTION ON ASSOCIATE JUDGE'S REPORT.
3-36 After the associate judge's report is filed, and unless the parties
3-37 have filed a written notice of appeal to the referring court, the
3-38 referring court may:

3-39 (1) adopt, approve, or reject the associate judge's
3-40 report;

3-41 (2) hear further evidence; or

3-42 (3) recommit the matter for further proceedings as the
3-43 referring court considers proper and necessary in the particular
3-44 circumstances of the case.

3-45 Sec. 54.1145. DECREE OR ORDER OF COURT. If an appeal to the
3-46 referring court is not filed or the right to an appeal to the
3-47 referring court is waived, the findings and the recommendations of
3-48 the associate judge become the decree or order of the referring
3-49 court only on the referring court's signing an order or decree
3-50 conforming to the associate judge's report.

3-51 Sec. 54.1146. APPEAL TO REFERRING COURT. (a) Any party is
3-52 entitled to a hearing by the judge of the referring court if, not
3-53 later than three days, computed in the manner provided by Rule 4,
3-54 Texas Rules of Civil Procedure, after the associate judge gives the
3-55 notice required by Section 54.1141, an appeal of the associate
3-56 judge's report is filed with the referring court.

3-57 (b) The first day of the appeal time to the referring courts
3-58 begins on the day after the day on which the associate judge gives
3-59 the notice required by Section 54.1141.

3-60 (c) An appeal to the referring court shall be in writing and
3-61 must specify the findings and conclusions of the associate judge to
3-62 which the party objects. The appeal is limited to the findings and
3-63 conclusions specified in the written appeal.

3-64 (d) On appeal to the referring court, the parties may
3-65 present witnesses as in a hearing de novo on the issues raised in
3-66 the appeal.

3-67 (e) Notice of any appeal to the referring court shall be
3-68 given to opposing counsel in the manner provided by Rule 21a, Texas
3-69 Rules of Civil Procedure.

4-1 (f) If an appeal to the referring court is filed by a party,
4-2 any other party may file an appeal to the referring court not later
4-3 than the seventh day after the date the initial appeal was filed.

4-4 (g) The referring court, after notice to the parties, shall
4-5 hold a hearing on all appeals not later than the 30th day after the
4-6 date on which the initial appeal was filed with the referring court.

4-7 (h) Prior to any hearing before an associate judge, the
4-8 parties may waive the right of appeal to the referring court. The
4-9 waiver may be in writing or on the record.

4-10 Sec. 54.1147. APPELLATE REVIEW. (a) Failure to appeal to
4-11 the referring court, by waiver or otherwise, on the approval by the
4-12 referring court of an associate judge's report does not deprive any
4-13 party of the right to appeal to or request other relief from a court
4-14 of appeals or the supreme court.

4-15 (b) The date of the signing of an order or judgment by the
4-16 referring court is the controlling date for the purposes of appeal
4-17 to or request for other relief from a court of appeals or the
4-18 supreme court.

4-19 Sec. 54.1148. JURY TRIAL DEMANDED. If a jury trial is
4-20 demandd and a jury fee paid in a trial on the merits, the associate
4-21 judge shall refer any matters requiring a jury back to the referring
4-22 court for a full trial before the court and jury.

4-23 Sec. 54.1149. INAPPLICABILITY OF SUBCHAPTER TO MASTERS
4-24 APPOINTED UNDER RULE 171. Masters appointed by the referring court
4-25 under Rule 171, Texas Rules of Civil Procedure, have all the duties
4-26 and powers set forth in the order of appointment and are not
4-27 governed by this subchapter.

4-28 Sec. 54.1150. IMMUNITY. An associate judge appointed under
4-29 this subchapter has the judicial immunity of a district judge.

4-30 Sec. 54.1151. COURT REPORTER. (a) A court reporter is not
4-31 required during a hearing held by an associate judge appointed
4-32 under this subchapter.

4-33 (b) A party, the associate judge, or the referring court may
4-34 provide for a court reporter during the hearing. The record may be
4-35 preserved by any other means approved by the associate judge.

4-36 (c) The referring court or associate judge may impose on a
4-37 party as costs the expense of preserving the record.

4-38 Sec. 54.1152. FEES. (a) A plaintiff in a civil case before
4-39 an associate judge shall pay a fee of \$25 for the services of the
4-40 associate judge.

4-41 (b) The clerk of the referring court shall collect the fee
4-42 and deposit it in the county treasury to be used for court-related
4-43 purposes.

4-44 SECTION 2. This Act takes effect September 1, 2003.

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