

BILL ANALYSIS

C.S.H.B. 2501
By: Gonzalez Toureilles
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Chapter 201 of the Family Code, provides for the appointment of associate judges to hear family law cases. Under this chapter, three types of associate judges may be appointed; those having general jurisdiction in family law matters; those with specific jurisdiction in Title IV-D child support cases; and those who hear child protective services cases.

Cases are referred to the associate judges by a judge of the district court, and most of the actions of these associate judges do not require ratification by the referring court. The chapter however, does provide for an appeal to the referring court of an associate judge's report or recommendation in a case, after a hearing before the associate judge, unless the associate judge has rendered and signed an agreed order agreed by the parties, a final default order, or a temporary order.

Although Chapter 201 of the Family Code, has been repeatedly amended over the years, the lack of clarity and understanding of those provisions requires revisions to be made to the terminology used in Chapter 201 so as to simplify various terms and to achieve consistent use of those terms, as well as to elucidate certain procedural matters. C.S.H.B.2501 does not change the current statutory powers of an associate judge, the authority of the referring court, or the right of a party to seek a review of an associate judge's proposed order or judgment.

However, C.S.H.B.2501 does provide for a de novo hearing before the referring court of an associate judge's report or recommendation to the referring court, so long as the request is timely filed. Moreover, C.S.H.B.2501 provides that a party's failure to request a de novo hearing before the referring court or a waiver of right to a de novo hearing does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

Lastly, C.S.H.B.2501 extends, from the third day, to the seventh working day after receiving notice of the associate judge's report or, in a Title IV-D case, after the associate judge signs a proposed order the time in which a party may file a request for a de novo hearing.

C.S.H.B.2501 also specifically provides that an order of the associate judge in a child protective services case constitutes a final order for the purpose of time limits under Section 263.401 of the Family Code, so that the case may not be dismissed if a request for a de novo hearing is filed and the time for conducting the hearing exceeds the time limits.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends Section 201.009(e) of the Family Code by providing for a request for a de novo hearing, and removing language that relates to an appeal of the associate judge's report or proposed order.

Amends Section 201.011(a), (b), and (d) of the Family Code to specify that the associate judge's report may be in the form of a proposed order. Additionally requires the associate judge to provide notice of the substance of the associate judge's report, including any proposed order to the parties. Lastly, specifies that notice of the substance of the associate judge's report is

rebuttably presumed to have been received on the date stated on the signed return receipt, if sent by certified mail, or the confirmation page, if sent by facsimile transmission.

Amends the heading to Section 201.0152 of the Family Code to read, NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT.

Amends Section 201.012(a) of the Family Code to require notice of the right to a de novo hearing before the referring court to be given to all parties.

Amends Section 201.013 of the Family Code to provide that pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order of the referring court, except for orders providing for an appointment of a receiver. If a request for de novo hearing before the referring court is not timely filed or if the right to a de novo hearing is waived, the proposed order or judgment of the associate judge becomes an order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

Amends Section 201.014 of the Family Code by changing the heading to read, JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Additionally provides that unless a party files a written request for a de novo hearing, the referring court may adopt, modify, or reject the proposed order or judgment.

In a suit filed by the Department of Family and Protective Services, an order rendered by the associate judge shall be considered a final order for the purposes of the time limits for the disposition of a case under Section 263.401 of the Family Code, regardless of whether a request for de novo hearing is filed.

Amends Section 201.015 of the Family Code by changing the heading to read, DE NOVO HEARING BEFORE REFERRING COURT. Additionally, provides that a party may request a de novo hearing before the referring court by filing a written request with the clerk not later than the seventh working day, rather than the third day, after the date a party receives notice of the substance of the associate judge's report under Section 201.011. A request for de novo hearing must specify the issues that will be presented to the referring court. Also allows for the presentation of witnesses and for a consideration by the referring court of a record made by a reporter or of jury verdict from the hearing before the associate judge. If a party files a request for a de novo hearing before the referring court, any other party may file a request for a de novo hearing not later than the seventh day after the date the initial request was filed. Further requires the referring court, after notice to all parties, to hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the court. Before the start of a de novo hearing, the parties may waive the right of de novo hearing in writing or on the record. The denial of relief to a party after a de novo hearing or waiver of right to a de novo hearing does not affect the right of that party to file a motion for a new trial, motion for judgment notwithstanding the verdict, or other post-trial motion. Finally, a party may not demand a second jury trial in a de novo hearing if the associate judge's proposed order or judgment resulted from a jury trial.

Further amends Section 201.016(a) of the Family by providing that a party's failure to request a de novo hearing before the referring court or a waiver of right to a de novo hearing does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

Amends Section 201.1041, Family Code by changing the heading to read, JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Also provides that if a request for a de novo hearing before the referring court is not timely filed or the right to request a de novo hearing has been waived, a proposed order or judgment of the associate judge, except for a proposed order or judgment providing for enforcement by contempt or the immediate incarceration of a party, shall become the order or judgment of the referring court without ratification by the referring court. Specifies that that a proposed order or judgment of an associate judge that provides for enforcement by immediate incarceration or contempt becomes an order of the referring court only if the referring court signs an order adopting the proposed order or judgment; or the order or judgment meets the requirements of Section 157.166, Family

Code. Finally, a proposed order or judgment of an associate judge is in full force and effect and is enforceable as an order of the referring court pending a de novo hearing before the referring court.

Amends Section 201.1042 of the Family Code by changing the heading to read, DE NOVO HEARING BEFORE REFERRING COURT. Provides that except as provided by this section, Section 201.015 applies to a request for a de novo hearing before the referring court. Additionally, requires a party requesting a de novo hearing to file notice with the clerk of the referring court not later than the seventh working day after the date the associate judge signs the proposed order or judgment. Moreover provides that a respondent who timely files a request for a de novo hearing before the referring court on a proposed order or judgment providing for incarceration be brought before the referring court not later than the first working day after the date on the respondent files the request for a de novo hearing. The referring court must determine whether the respondent should be released on bond or whether the respondent's appearance in court at designated time and place can be otherwise assured. Lastly, provides that until a de novo hearing is held under this section and the referring court has signed an order or judgment or has ruled on a timely filed motion for new trial or motion to vacate, correct, or reform a judgment, an associate judge may not hold a hearing on the respondent's compliance with conditions in the associate judge's proposed order or judgment for suspension of commitment or on a motion to revoke the respondent's community supervision and suspension of commitment.

Amends Section 201.111 of the Family Code by changing the heading to read, TIME TO ACT ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT THAT INCLUDES RECOMMENDED FINDING OF CONTEMPT. Not later than 10th day after the associate judge signs an proposed order or judgment recommending a finding of contempt is signed, the referring court shall adopt, modify, or reject the proposed order or judgment. The time limit under Subsection (a) does not apply if a party has filed a written request for a de novo hearing before the referring court.

Amends Section 201.2041 of the Family Code by changing the heading to read, JUDICIAL ACTION ON AN ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. If a request for a de novo hearing is not timely filed or the right to a de novo hearing is waived, a proposed order or judgment of the associate judge becomes an order or judgment of the referring court by operation of law without ratification by the referring court. Additionally, an order rendered by the associate judge shall be considered a final order for the purposes of the mandatory dismissal deadlines under Section 263.401, regardless of whether a de novo hearing before the referring court is requested.

Lastly, amends Section 201.2042 of the Family Code by changing the heading to read, DE NOVO HEARING BEFORE REFERRING COURT. Provides that Section 201.015 applies to a request for a de novo hearing before the referring court, and the party requesting a de novo hearing before the referring court shall file notice with the referring court and the clerk of that court.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.2501 modifies the originally filed H.B.2501 by restoring language under Section 201.011(b) of the Family Code, to permit the associate judge to provide notice of the substance of the judge's report, rather than to require the associate judge to provide the parties with a signed and dated copy of the report. Deletes amendments to Section 201.011(c). Restores existing code language under Section 201.011(d) with respect to receipt of "notice" instead of "report."

Additionally, C.S.H.B.2501 creates Subsection 201.014(b) of the Family Code, to specify that in a suit filed by the Department of Family and Protective Services an order rendered by an

associate judge shall be considered a final order with respect to the dismissal deadlines under Section 263.401 of the Family Code, regardless of whether a de novo hearing is requested.

C.S.H.B.2501 also changes “seventh day” to “seventh working day” with respect to the time within which a party may request a de novo hearing after receipt of the notice of substance of an associate’s judge’s report. Restores language under Section 201.015(c) of the Family Code, allowing the presentation of witnesses and the consideration of a record and jury verdict in a de novo hearing.

Furthermore, C.S.H.B.2501 creates Subsection 201.2041(a), from existing code text with conforming changes to terminology to provide that in a suit filed by the Department of Family and Protective Services an order rendered by an associate judge shall be considered a final order with respect to the dismissal deadlines under Section 263.401 of the Family Code, regardless of whether a de novo hearing is requested.

Finally, C.S.H.B.2501 makes conforming changes in terminology with respect to a de novo hearing before the referring court, instead of an appeal of the associate judge’s recommendation.