

BILL ANALYSIS

Senate Research Center

S.B. 406
By: Wentworth
Jurisprudence
8/13/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law authorizes a judge to recuse himself or request the presiding judge of the statutory probate to appoint another judge to hear a recusal motion. S.B. 406 requires the presiding judge of the administrative judicial district to assign a judge to hear a recusal motion. Providing a judge from a different judicial region to conduct a hearing on a recusal would ensure fair and impartial treatment

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 25.00255(f), (g), (i), and (k), Government Code, as follows:

(f) Requires that a judge, when a motion for recusal or disqualification (motion) of a judge has been filed and before further proceedings in a case can occur, recuse himself or herself or request the assignment of a judge to hear the motion, rather than having a judge assigned by the presiding judge of the statutory probate courts. Provides instructions for the assignment of a judge.

(g) Requires a judge who recuses himself or herself to enter an order of recusal and request that the presiding judge of the statutory probate courts request the assignment of a judge to hear the motion as provided by Subsection (i).

(i) Requires the presiding judge of the statutory probate courts, after receiving a request under Subsection (g) or (h), to immediately forward the request to the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district assign a judge to hear the motion. Prohibits the presiding judge from designating a judge of a statutory probate court in the same county as the statutory probate court served by the judge who is the subject of the motion, to hear the motion.

(k) Authorizes the presiding judge of the administrative judicial district or the judge assigned to hear the motion for recusal, rather than a judge assigned by the presiding judge, to approve a motion for sanctions authorized by Rule 215.2(b), Texas Rules of Civil Procedure.

SECTION 2. Amends Subchapter B, Chapter 25, Government Code, by adding Section 25.00256, as follows:

Sec. 25.00256. TERTIARY RECUSAL MOTION AGAINST JUDGE. (a) Defines "tertiary recusal motion."

(b) Requires a judge who declines recusal after a tertiary recusal motion is filed to comply with applicable rules of procedure for recusal and disqualification except that the judge is required to continue to preside over the case, sign orders in the case, and move the case to final disposition as though a tertiary recusal motion had not been filed.

(c) Requires a judge hearing a tertiary recusal motion against another judge who denies the motion to award reasonable and necessary attorney's fees and costs to the party opposing the motion. Provides that the party making the motion and the attorney for the party are jointly and severally liable for the award of fees and costs. Requires the fees and costs to be paid before the 31st day after the date the order denying the tertiary recusal motion is rendered unless the order is properly superseded.

(d) Provides that the denial of a tertiary recusal motion is only reviewable on appeal from final judgment.

(e) Requires the new judge for the case to vacate all orders signed by the sitting judge during the pendency of the tertiary recusal motion if a tertiary recusal motion is finally sustained.

SECTION 3. Amends Section 30.016(a), Civil Practice and Remedies Code, to redefine "tertiary recusal motion."

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.