

BILL ANALYSIS

C.S.S.B. 406
By: Wentworth
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. This bill 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

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

The bill would amend the Government Code to make motions for disqualification or recusal of a statutory probate court judge subject to the option of the movant to specify whether the party desires the presiding judge of the administrative judicial region covering the court to assign a judge to hear the motion. If the party chooses this option, the presiding statutory probate judge must request the regional presiding judge to make the assignment. Otherwise, the act provides that the presiding statutory probate judge will have discretion to hear the motion, designate a judge to hear the motion or request the chief justice of the supreme court or the presiding judge of the administrative judicial region where the motion was filed to appoint a judge to hear the motion. The act also provides that a judge assigned by the presiding statutory probate judge must be from a county other than the county in which the court where the motion was filed is located. The act also makes conforming and gender neutrality changes.

The bill also adds a provision regarding a tertiary recusal motion in statutory probate courts which adopts a different definition than that currently contained in the Civil Practice and Remedies Code in that it would apply to a third or subsequent motion against any judge. The bill provides that a pending tertiary recusal motion would not stop orders being signed by the judge and the case from going forward as though the motion had not been filed. Attorneys' fees and costs must be awarded to the opponent of a movant whose tertiary recusal motion is denied, and such a denial would not be subject to interlocutory appeal. If a tertiary recusal motion is finally sustained, the new judge must vacate all orders signed by the sitting judge while the motion was pending.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The bill as engrossed in the senate provided for the transfer of the responsibility for assignment of judges to hear motions to recuse from the presiding statutory probate judge to the presiding judge of the judicial region. The substitute provides the movant an option of making a mandatory request that the regional presiding judge make the assignment or leaving the task in the hands of the presiding statutory probate judge, who is given discretion to request the chief justice of the supreme court or the appropriate regional presiding judge to make the assignment. The original bill forbade the regional presiding judge to make an assignment of a judge from the same county as the statutory probate court where the motion was made. The substitute contains this prohibition only for assignments made by the presiding statutory probate judge.

The substitute also adds an entirely new section providing that when a party has previously filed two recusal motions in a case, subsequent motions shall not cause other proceedings in the case to stop. A definition of "tertiary recusal motion" is included in this regard. Attorneys' fees and costs are required to be awarded to the prevailing party when a tertiary recusal motion is denied. Such fees and costs are required to be paid before the 31st day after the order unless the order is superseded. The bill further provides that a denial of a tertiary recusal motion is only reviewable on appeal from a final judgment. If such a motion is sustained, the new judge must vacate all orders signed by the sitting judge while the motion was pending.