

By: Wentworth

S.B. No. 406

Substitute the following for S.B. No. 406:

By: Hartnett

C.S.S.B. No. 406

A BILL TO BE ENTITLED

1

AN ACT

2 relating to a motion for recusal or disqualification of a statutory  
3 probate court judge.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 25.00255, Government Code, is amended by  
6 amending Subsections (f), (g), (i), and (k) and adding Subsections  
7 (i-1) and (i-2) to read as follows:

8 (f) Before further proceedings in a case in which a motion  
9 for the recusal or disqualification of a judge has been filed, the  
10 judge shall:

11 (1) recuse himself or herself; or

12 (2) request that the presiding judge of the statutory  
13 probate courts assign a judge to hear the motion, subject to  
14 Subsection (i)(1)(B) or (i-1).

15 (g) A judge who recuses himself or herself:

16 (1) shall enter an order of recusal and request that  
17 the presiding judge of the statutory probate courts assign a judge  
18 to hear the motion for recusal or disqualification, subject to  
19 Subsection (i)(1)(B) or (i-1); and

20 (2) may not take other action in the case except for  
21 good cause stated in the order in which the action is taken.

22 (i) After receiving a request under Subsection (f) or (g)  
23 [~~or (h)~~], the presiding judge of the statutory probate courts  
24 shall:

1           (1) except as provided by Subsection (i-1),  
2 immediately:

3           (A) set a hearing on the motion for recusal or  
4 disqualification before himself or herself or a judge designated by  
5 the presiding judge; or

6           (B) at the presiding judge's discretion, request  
7 the chief justice of the supreme court or the presiding judge of the  
8 administrative judicial region in which the statutory probate court  
9 in which the motion was filed is located to appoint a judge to hear  
10 the motion;

11           (2) cause notice of the hearing to be given to all  
12 parties or their counsel to the case; and

13           (3) make other orders, including orders for interim or  
14 ancillary relief, in the pending case.

15           (i-1) If the party filing the motion for recusal or  
16 disqualification against a judge specifies in the motion that the  
17 party desires the presiding judge of the administrative judicial  
18 region in which the statutory probate court in which the motion was  
19 filed is located to assign another judge to hear the motion, the  
20 judge against whom the motion was filed shall forward that request  
21 to the presiding judge of the statutory probate courts.  
22 Immediately on receiving the request, the presiding judge of the  
23 statutory probate courts shall request the presiding judge of the  
24 administrative judicial region to assign a judge to hear the  
25 motion.

26           (i-2) A judge designated by the presiding judge of the  
27 statutory probate courts to hear a motion for recusal or

1 disqualification under Subsection (i)(1)(A) must be from a county  
2 other than the county in which the statutory probate court in which  
3 the motion was filed is located.

4 (k) A party may file a motion for sanctions alleging that  
5 another party in the case filed a motion for the recusal or  
6 disqualification of a judge solely to delay the case and without  
7 sufficient cause. The presiding judge or the judge assigned [~~by the~~  
8 ~~presiding judge~~] to hear the motion for recusal may approve a motion  
9 for sanctions authorized by Rule 215.2(b), Texas Rules of Civil  
10 Procedure.

11 SECTION 2. Subchapter B, Chapter 25, Government Code, is  
12 amended by adding Section 25.00256 to read as follows:

13 Sec. 25.00256. TERTIARY RECUSAL MOTION AGAINST JUDGE. (a)  
14 In this section, "tertiary recusal motion" means a third or  
15 subsequent motion for recusal or disqualification filed in a case  
16 against any statutory probate court judge by the same party. The  
17 term includes any third or subsequent motion filed in the case by  
18 the same party, regardless of whether that motion is filed against a  
19 different judge than the judge or judges against whom the previous  
20 motions for recusal or disqualification were filed.

21 (b) A judge who declines recusal after a tertiary recusal  
22 motion is filed shall comply with applicable rules of procedure for  
23 recusal and disqualification except that the judge shall continue  
24 to:

- 25 (1) preside over the case;  
26 (2) sign orders in the case; and  
27 (3) move the case to final disposition as though a

1 tertiary recusal motion had not been filed.

2 (c) A judge hearing a tertiary recusal motion against  
3 another judge who denies the motion shall award reasonable and  
4 necessary attorney's fees and costs to the party opposing the  
5 motion. The party making the motion and the attorney for the party  
6 are jointly and severally liable for the award of fees and costs.  
7 The fees and costs must be paid before the 31st day after the date  
8 the order denying the tertiary recusal motion is rendered unless  
9 the order is properly superseded.

10 (d) The denial of a tertiary recusal motion is only  
11 reviewable on appeal from final judgment.

12 (e) If a tertiary recusal motion is finally sustained, the  
13 new judge for the case shall vacate all orders signed by the sitting  
14 judge during the pendency of the tertiary recusal motion.

15 SECTION 3. Section 30.016(a), Civil Practice and Remedies  
16 Code, is amended to read as follows:

17 (a) In this section, "tertiary recusal motion" means a third  
18 or subsequent motion for recusal or disqualification filed against  
19 a district court~~[, statutory probate court,]~~ or statutory county  
20 court judge by the same party in a case.

21 SECTION 4. The changes in law made by this Act apply only to  
22 a motion for recusal or disqualification of a judge that is filed on  
23 or after the effective date of this Act. A motion for recusal or  
24 disqualification of a judge filed before the effective date of this  
25 Act is governed by the law in effect on the date the motion was  
26 filed, and the former law is continued in effect for that purpose.

27 SECTION 5. This Act takes effect September 1, 2007.