

BILL ANALYSIS

H.B. 3315
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

During the interim following the 80th Legislature, Regular Session, 2007, a committee of the State Bar of Texas studied the Texas court system and recommended that the various statutes relating to statutory probate court associate judges conform to one another as much as possible. Among the issues identified by the committee were that some differences among the duties of associate judges vary due to the nature of the work performed by the court to which they are appointed. Another issue was examined as the direct result of the death of a Harris County statutory probate court judge in the summer of 2008. Under the current statute, the associate judge's employment terminates immediately upon the appointing judge's death, making it impossible for the associate judge to continue the administrative business of the court.

H.B. 3315 clarifies the employment status of appointed statutory probate court associate judges when the appointing judge vacates office, provides circumstances in which the associate judge may continue the administrative business of the court, and prohibits the associate judge from performing any judicial function until a successor judge is appointed or elected. The bill authorizes a party to request a de novo hearing before the referring court, rather than authorizing a party to appeal an associate judge's report to the referring court.

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

H.B. 3315 amends the Government Code to provide that the employment of an appointed statutory probate court associate judge who serves a single court continues, subject to other provisions, if the appointing judge vacates the judge's office, unless the successor appointed or elected judge terminates that employment. The bill provides that the employment of an associate judge who serves two courts continues, subject to other provisions, if one of the appointing judges vacates the judge's office, unless the successor appointed or elected judge, or the judge of the other court served by the associate judge, terminates that employment. The bill provides that the employment of an associate judge who serves more than two courts continues, subject to other provisions, if an appointing judge vacates the judge's office, unless, if no successor judge has been elected or appointed, the majority of the judges of the other courts the associate judge serves vote to terminate that employment or, if a successor judge has been elected or appointed, the majority of the judges of the courts the associate judge serves vote to terminate that employment. The bill authorizes an associate judge whose employment continues as above to perform administrative functions with respect to that court, but prohibits the associate judge from performing any judicial function until a successor judge is appointed or elected.

H.B. 3315 expands the powers of an associate judge by authorizing such judge, except as limited by an order or referral, to: order the attachment of a witness or party who fails to obey a subpoena; order the detention of a witness or party found guilty of contempt, pending approval

by the referring court; render and sign certain orders without prejudice to the right to a de novo hearing before the referring court; and sign a final order that includes a waiver of the right to a de novo hearing. The bill authorizes an associate judge, in the interest of justice, to refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party. The bill provides that certain orders rendered and signed by an associate judge constitutes an order of the referring court, and requires the judge of the referring court to sign the order not later than the 30th day after the date the associate judge signs the order. The bill provides that an answer filed by or on behalf of a party who previously filed an unrevoked waiver that waives notice to the party of the final hearing, or waives the party's appearance at the final hearing, revokes that waiver.

H.B. 3315 authorizes a court reporter to be provided during a hearing held by an associate judge, unless required by other law, rather than providing that a court reporter is not required at such a hearing. The bill requires a court reporter to be provided when the associate judge presides over a jury trial. The bill authorizes the record to be preserved, in the absence of a court reporter or an agreement of the parties, by any means approved by the referring court. The bill authorizes the referring court, on a request for a de novo hearing, to consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented.

H.B. 3315 includes a proposed order in the list of forms acceptable for a written report that is required to be prepared by the associate judge and makes conforming changes. The bill authorizes a hearing notice regarding the substance of the associate judge's report to be given to the parties by facsimile transmission. The bill provides that there is a rebuttable presumption that notice is received on the date stated on the signed return receipt if notice was provided by certified mail or, if notice was provided by facsimile transmission, on the date stated on the confirmation page produced by the facsimile machine and makes conforming changes. The bill includes any proposed order, as part of the papers relative to the case, the associate judge, after a hearing, is required to send to the referring court.

H.B. 3315 authorizes a party to request a de novo hearing before the referring court, rather than authorizing a party to appeal an associate judge's report to the referring court. The bill makes conforming changes and sets forth provisions regarding a party's notice of the right to a de novo hearing, an associate judge's proposed order or judgment, a referring court's authorized actions on an associate judge's proposed order or judgment, and a party's right to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion. The bill prohibits a party from demanding a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial. The bill sets out provisions relating to the party's right to appeal or request other relief from a court of appeals or the supreme court.

EFFECTIVE DATE

September 1, 2009.