

## **BILL ANALYSIS**

C.S.S.B. 683  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

S.B. 406, 80th Legislature, Regular Session, 2007, made changes to the Government Code, requiring the presiding judge of statutory probate courts to request the presiding judge of the administrative judicial district to assign a judge to hear a recusal motion. However current law on who makes the resulting reassignment is unclear.

As proposed, C.S.S.B. 683 conforms probate judge recusal motions and reassignments to current law. The bill details a separate process for handling motions of statutory probate court judges.

### **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**

SECTION 1. Amends Section 25.0022(h), Government Code, as follows:

(h) Authorizes a judge or a former or retired judge of a statutory probate court, subject to Section 25.002201, to be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or a statutory court exercising probate jurisdiction under certain circumstances. Deletes existing text related to authorizing a judge or a former or retired judge of a statutory probate court to be assigned to hold court in a statutory probate court, county court, or any statutory court exercising probate jurisdiction when a motion to recuse the judge of a statutory probate court has been filed. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter B, Chapter 25, Government Code, by adding Section 25.002201, as follows:

Sec. 25.002201. ASSIGNMENT OF JUDGE ON RECUSAL OR DISQUALIFICATION. (a) Authorizes a judge or a former or retired judge of a statutory probate court to be assigned by the presiding judge of the administrative judicial district under Section 25.00255 (Recusal or Disqualification of Judge) to hold court in a statutory probate court if the judge of the statutory probate court recuses himself or herself, or a motion for the recusal or disqualification of the judge is granted.

(b) Prohibits the presiding judge of the statutory probate courts from assigning a judge to hold court under the circumstances described by Subsection (a).

(c) Provides that the provisions of Section 25.0022 (Administration of Statutory Probate Courts) applicable to a judge assigned under that section apply to the same extent to a judge assigned under this section.

SECTION 3. Amends Section 25.00255, Government Code, by amending Subsections (g) and (i) and adding Subsection (i-1), as follows:

(g) Requires a judge who recuses himself or herself to enter an order of recusal and request that the presiding judge of the administrative judicial district assign a judge under

Section 25.002201 to hear the case. Deletes existing text related to requiring 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 for recusal or disqualification as provided by Subsection (i).

(i) Deletes existing text related to receiving a request under Subsection (g).

(i-1) Requires the judge who heard a motion to inform the presiding judge of the administrative judicial district of that fact, and requires that presiding judge to assign a judge under Section 25.002201 to hear the case if, after a hearing required by Subsection (i), the motion for recusal or disqualification is granted.

SECTION 4. Effective date: upon passage or September 1, 2009.

#### **EFFECTIVE DATE**

Upon passage or September 1, 2009.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute alters the current statute to make it clear that the presiding statutory probate court judge may only appoint a judge to hear a recusal or appoint a successor judge if a judge is recused only under the circumstances described in Section 25.002201(b), Government Code.

Those circumstances are limited to the situations where the presiding judge of the administrative judicial district fails to appoint a judge to hear the recusal within 15 days of receipt of the notice of a request to appoint a judge to hear the recusal, and when the presiding judge of the administrative judicial district fails to appoint a judge to hear the underlying case after a judge has been recused.

In counties that contain only one statutory probate court, if the judge of that court is recused, then the presiding judge of the administrative judicial district shall appoint a current, retired, or former statutory probate court judge to hear the underlying case.

In counties that contain multiple statutory probate courts, if a judge is recused, then the clerk shall randomly refile the case into another statutory probate court within that county. If there is no other court available due to recusal or disqualification, then the presiding judge of the administrative judicial district shall appoint a current, retired, or former statutory probate court judge to hear the underlying case.

A judge who is disqualified shall notify the presiding judge of the administrative judicial district who shall appoint a current, retired, or former statutory probate court judge to hear the underlying case.

The presiding judge of the administrative judicial district has the authority to make other orders, including orders for interim or ancillary relief, in the pending case, but may delegate this authority to the presiding judge of the statutory probate courts in any pending recusal case.

A judge assigned to hear a recusal motion has the authority without further appointment to hear any amended or supplemental motion for recusal or disqualification filed in the case.