

By: Gonzales

H.B. No. 3315

A BILL TO BE ENTITLED

AN ACT

relating to the employment and powers of, and procedures for matters referred to, a statutory probate court associate judge.

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

SECTION 1. Section 54.604, Government Code, is amended by amending Subsection (d) and adding Subsections (e), (f), (g), and (h) to read as follows:

(d) The appointment of the associate judge terminates if:

(1) ~~[the appointing judge vacates the judge's office,~~  
~~[(2)]~~ the associate judge becomes a candidate for election to public office; or

(2) ~~[(3)]~~ the commissioners court does not appropriate funds in the county's budget to pay the salary of the associate judge.

(e) If an associate judge serves a single court and the appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment.

(f) If an associate judge serves two courts and one of the appointing judges vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment or the judge of the other court served by the associate judge

1 terminates that employment as provided by Subsection (c).

2 (g) If an associate judge serves more than two courts and an  
3 appointing judge vacates the judge's office, the associate judge's  
4 employment continues, subject to Subsections (d) and (h), unless:

5 (1) if no successor judge has been elected or  
6 appointed, the majority of the judges of the other courts the  
7 associate judge serves vote to terminate that employment; or

8 (2) if a successor judge has been elected or  
9 appointed, the majority of the judges of the courts the associate  
10 judge serves, including the successor judge, vote to terminate that  
11 employment as provided by Subsection (b).

12 (h) Notwithstanding the powers of an associate judge  
13 provided by Section 54.610, an associate judge whose employment  
14 continues as provided by Subsection (e), (f), or (g) after the judge  
15 of a court served by the associate judge vacates the judge's office  
16 may perform administrative functions with respect to that court,  
17 but may not perform any judicial function, including any power  
18 prescribed by Section 54.610, with respect to that court until a  
19 successor judge is appointed or elected.

20 SECTION 2. Section 54.610, Government Code, is amended to  
21 read as follows:

22 Sec. 54.610. POWERS OF ASSOCIATE JUDGE. (a) Except as  
23 limited by an order of referral, an associate judge may:

- 24 (1) conduct a hearing;  
25 (2) hear evidence;  
26 (3) compel production of relevant evidence;  
27 (4) rule on the admissibility of evidence;

- 1 (5) issue a summons for the appearance of witnesses;
- 2 (6) examine a witness;
- 3 (7) swear a witness for a hearing;
- 4 (8) make findings of fact on evidence;
- 5 (9) formulate conclusions of law;
- 6 (10) recommend an order to be rendered in a case;
- 7 (11) regulate all proceedings in a hearing before the
- 8 associate judge; ~~and~~
- 9 (12) take action as necessary and proper for the
- 10 efficient performance of the associate judge's duties;
- 11 (13) order the attachment of a witness or party who
- 12 fails to obey a subpoena;
- 13 (14) order the detention of a witness or party found
- 14 guilty of contempt, pending approval by the referring court as
- 15 provided by Section 54.616;
- 16 (15) without prejudice to the right to a de novo
- 17 hearing under Section 54.618, render and sign:
- 18 (A) a final order agreed to in writing as to both
- 19 form and substance by all parties;
- 20 (B) a final default order;
- 21 (C) a temporary order;
- 22 (D) a final order in a case in which a party files
- 23 an unrevoked waiver made in accordance with Rule 119, Texas Rules of
- 24 Civil Procedure, that waives notice to the party of the final
- 25 hearing or waives the party's appearance at the final hearing;
- 26 (E) an order specifying that the court clerk
- 27 shall issue:

1                    (i) letters        testamentary        or        of  
2 administration; or

3                    (ii) letters of guardianship; or

4                    (F) an order for inpatient or outpatient mental  
5 health, mental retardation, or chemical dependency services; and

6                    (16) sign a final order that includes a waiver of the  
7 right to a de novo hearing in accordance with Section 54.618.

8                    (b) An associate judge may, in the interest of justice,  
9 refer a case back to the referring court regardless of whether a  
10 timely objection to the associate judge hearing the trial on the  
11 merits or presiding at a jury trial has been made by any party.

12                    (c) An order described by Subsection (a)(15) that is  
13 rendered and signed by an associate judge constitutes an order of  
14 the referring court. The judge of the referring court shall sign  
15 the order not later than the 30th day after the date the associate  
16 judge signs the order.

17                    (d) An answer filed by or on behalf of a party who previously  
18 filed a waiver described in Subsection (a)(15)(D) revokes that  
19 waiver.

20                    SECTION 3. Section 54.612, Government Code, is amended by  
21 amending Subsections (a), (b), and (c) and adding Subsection (e) to  
22 read as follows:

23                    (a) A court reporter may be provided ~~[is not required]~~  
24 during a hearing held by an associate judge appointed under this  
25 subchapter unless required by other law. A court reporter is  
26 required to be provided when the associate judge presides over a  
27 jury trial.

1 (b) A party, the associate judge, or the referring court may  
2 provide for a reporter during the hearing, if one is not otherwise  
3 provided.

4 (c) Except as provided by Subsection (a), in the absence of  
5 a court reporter or on agreement of the parties, the [The] record  
6 [of a hearing before an associate judge] may be preserved by any  
7 means approved by the referring court.

8 (e) On a request for a de novo hearing, the referring court  
9 may consider testimony or other evidence in the record, if the  
10 record is taken by a court reporter, in addition to witnesses or  
11 other matters presented under Section 54.618.

12 SECTION 4. Section 54.614, Government Code, is amended to  
13 read as follows:

14 Sec. 54.614. REPORT. (a) The associate judge's report may  
15 contain the associate judge's findings, conclusions, or  
16 recommendations. The associate judge shall prepare a written  
17 report in the form directed by the referring court, including in the  
18 form of:

19 (1) [. The form may be] a notation on the referring  
20 court's docket sheet; or

21 (2) a proposed order.

22 (b) After a hearing, the associate judge shall provide the  
23 parties participating in the hearing notice of the substance of the  
24 associate judge's report, including any proposed order.

25 (c) Notice may be given to the parties:

26 (1) in open court, by an oral statement or a copy of  
27 the associate judge's written report; ~~[or]~~

(2) by certified mail, return receipt requested; or

(3) by facsimile transmission.

(d) There is a rebuttable presumption that notice is received ~~[The associate judge shall certify the date of mailing of notice by certified mail. Notice is considered given]~~ on the ~~[third day after the]~~ date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile transmission ~~[of mailing]~~.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

SECTION 5. The heading to Section 54.615, Government Code, is amended to read as follows:

Sec. 54.615. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT ~~[APPEAL]~~.

SECTION 6. Section 54.615(a), Government Code, is amended to read as follows:

(a) An associate judge shall give all parties notice of the right to a de novo hearing before ~~[of appeal to the judge of]~~ the referring court.

SECTION 7. Section 54.616, Government Code, is amended to read as follows:

Sec. 54.616. ORDER OF COURT. (a) Pending a de novo hearing

1 before ~~[appeal of the associate judge's report to]~~ the referring  
 2 court, a proposed order or judgment ~~[the decisions and~~  
 3 ~~recommendations]~~ of the associate judge has ~~[judge's report have]~~  
 4 the force and effect, and is ~~[are]~~ enforceable as, an order or  
 5 judgment of the referring court, except for an order ~~[orders]~~  
 6 providing for ~~[incarceration or for]~~ the appointment of a receiver.

7 (b) Except as provided by Section 54.610(c), if a request  
 8 for a de novo hearing before ~~[If an appeal to]~~ the referring court  
 9 is not timely filed or the right to a de novo hearing before ~~[an~~  
 10 ~~appeal to]~~ the referring court is waived, the proposed order or  
 11 judgment ~~[findings and recommendations]~~ of the associate judge  
 12 becomes ~~[become]~~ the order or judgment of the referring court at the  
 13 time the judge of the referring court signs the proposed ~~[an]~~ order  
 14 or judgment ~~[conforming to the associate judge's report]~~.

15 SECTION 8. Section 54.617, Government Code, is amended to  
 16 read as follows:

17 Sec. 54.617. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED  
 18 ORDER OR JUDGMENT ~~[REPORT]~~. (a) Unless a party files a written  
 19 request for a de novo hearing before the referring court ~~[notice of~~  
 20 ~~appeal]~~, the referring court may:

21 (1) adopt, modify, or reject the associate judge's  
 22 proposed order or judgment ~~[report]~~;

23 (2) hear further evidence; or

24 (3) recommit the matter to the associate judge for  
 25 further proceedings.

26 (b) The judge of the referring court shall sign a proposed  
 27 order or judgment the court adopts as provided by Subsection (a)(1)

1 not later than the 30th day after the date the associate judge  
2 signed the order or judgment.

3 SECTION 9. Section 54.618, Government Code, is amended to  
4 read as follows:

5 Sec. 54.618. DE NOVO HEARING BEFORE ~~[APPEAL TO]~~ REFERRING  
6 COURT. (a) A party may request a de novo hearing before the  
7 referring court ~~[appeal an associate judge's report]~~ by filing with  
8 the clerk of the referring court a written request ~~[notice of~~  
9 ~~appeal]~~ not later than the seventh working ~~[third]~~ day after the  
10 date the party receives notice of the substance of the associate  
11 judge's report as provided by Section 54.614.

12 (b) A request for a de novo hearing under this section must  
13 specify the issues that will be presented ~~[An appeal]~~ to the  
14 referring court ~~[must be made in writing and specify the findings~~  
15 ~~and conclusions of the associate judge to which the party objects.~~  
16 ~~The appeal is limited to the findings and conclusions specified in~~  
17 ~~the written appeal].~~

18 (c) In the de novo hearing before the referring court, the  
19 ~~[The]~~ parties may present witnesses ~~[on appeal to the referring~~  
20 ~~court as in a hearing de novo]~~ on the issues specified ~~[raised]~~ in  
21 the request for hearing ~~[appeal]~~. The referring court may also  
22 consider the record from the hearing before the associate judge,  
23 including the charge to and verdict returned by a jury, if the  
24 record was taken by a court reporter.

25 (d) Notice of a request for a de novo hearing before ~~[an~~  
26 ~~appeal to]~~ the referring court must be given to the opposing  
27 attorney in the manner provided by Rule 21a, Texas Rules of Civil



1 Procedure.

2 (e) If a request for a de novo hearing before ~~[an appeal to]~~  
3 the referring court is filed by a party, any other party may file a  
4 request for a de novo hearing before ~~[an appeal to]~~ the referring  
5 court not later than the seventh day after the date of filing of the  
6 initial request ~~[appeal]~~.

7 (f) The referring court, after notice to the parties, shall  
8 hold a de novo hearing ~~[on all appeals]~~ not later than the 30th day  
9 after the date on which the initial request for a de novo hearing  
10 ~~[appeal]~~ was filed with the clerk of the referring court, unless all  
11 of the parties agree to a later date.

12 (g) Before the start of a hearing conducted by an associate  
13 judge, the parties may waive the right of a de novo hearing before  
14 ~~[appeal to]~~ the referring court. The waiver may be in writing or on  
15 the record.

16 (h) The denial of relief to a party after a de novo hearing  
17 under this section or a party's waiver of the right to a de novo  
18 hearing before the referring court does not affect the right of a  
19 party to file a motion for new trial, motion for judgment  
20 notwithstanding the verdict, or other post-trial motion.

21 (i) A party may not demand a second jury in a de novo hearing  
22 before the referring court if the associate judge's proposed order  
23 or judgment resulted from a jury trial.

24 SECTION 10. Section 54.619, Government Code, is amended to  
25 read as follows:

26 Sec. 54.619. APPELLATE REVIEW. (a) A party's failure to  
27 request a de novo hearing before ~~[Failure to appeal to]~~ the

1 referring court or a party's waiver of the right to request a de  
2 novo hearing before ~~[, by waiver or otherwise, the approval by]~~ the  
3 referring court ~~[of an associate judge's report]~~ does not deprive  
4 the ~~[a]~~ party of the right to appeal to or request other relief from  
5 a court of appeals or the supreme court.

6 (b) Except as provided by Subsection (c), the ~~[The]~~ date the  
7 judge of a referring court signs an order or judgment is the  
8 controlling date for the purposes of appeal to or request for other  
9 relief from a court of appeals or the supreme court.

10 (c) The date an order described by Section 54.610(a)(15) is  
11 signed by an associate judge is the controlling date for the purpose  
12 of an appeal to or a request for other relief relating to the order  
13 from a court of appeals or the supreme court.

14 SECTION 11. The changes in law made by this Act apply to a  
15 matter referred to a statutory probate court associate judge on or  
16 after the effective date of this Act. A matter referred to a  
17 statutory probate court associate judge before the effective date  
18 of this Act is governed by the law in effect on the date the matter  
19 was referred to the associate judge, and the former law is continued  
20 in effect for that purpose.

21 SECTION 12. This Act takes effect September 1, 2009.