

AN ACT

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

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

SECTION 1. Subsections (d) and (h), Section 25.0022, Government Code, are amended to read as follows:

(d) The presiding judge shall:

(1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;

(2) advise local statutory probate court judges on case flow management practices and auxiliary court services;

(3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;

(4) appoint an assistant presiding judge of the statutory probate courts;

(5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;

(6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration

of justice in the statutory probate courts;

(7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section; ~~and~~

(8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions; and

(9) assign a judge or former or retired judge of a statutory probate court to hear a case under the circumstances described by Section 25.002201(b).

(h) Subject to Section 25.002201, a ~~[A]~~ judge or a former or retired judge of a statutory probate court may be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

(1) a statutory probate judge requests assignment of another judge to the judge's court;

(2) a statutory probate judge is absent, disabled, or disqualified for any reason;

(3) a statutory probate judge is present or is trying cases as authorized by the constitution and laws of this state and the condition of the court's docket makes it necessary to appoint an additional judge;

(4) the office of a statutory probate judge is vacant;

(5) the presiding judge of an administrative judicial district requests the assignment of a statutory probate judge to

1 hear a probate matter in a county court or statutory county court;

2           (6) the presiding judge of the administrative judicial  
3 district fails to timely assign a judge to replace a recused or  
4 disqualified statutory probate court judge as described by Section  
5 25.002201(b) [~~a motion to recuse the judge of a statutory probate~~  
6 ~~court has been filed~~];

7           (7) a county court judge requests the assignment of a  
8 statutory probate judge to hear a probate matter in the county  
9 court; or

10           (8) a local administrative statutory probate court  
11 judge requests the assignment of a statutory probate judge to hear a  
12 matter in a statutory probate court.

13           SECTION 2. Subchapter B, Chapter 25, Government Code, is  
14 amended by adding Section 25.002201 to read as follows:

15           Sec. 25.002201. ASSIGNMENT OF JUDGE ON RECUSAL OR  
16 DISQUALIFICATION. (a) Not later than the 15th day after the date  
17 an order of recusal or disqualification of a statutory probate  
18 court judge is issued in a case, the presiding judge of the  
19 administrative judicial district shall assign a statutory probate  
20 court judge or a former or retired judge of a statutory probate  
21 court to hear the case if:

22                   (1) the judge of the statutory probate court recused  
23 himself or herself under Section 25.00255(g)(1)(A);

24                   (2) the judge of the statutory probate court  
25 disqualified himself or herself under Section 25.00255(g-1);

26                   (3) the order was issued under Section  
27 25.00255(i-3)(1); or

1           (4) the presiding judge of the administrative judicial  
2 district receives notice and a request for assignment from the  
3 clerk of the statutory probate court under Section 25.00255(1).

4           (b) If the presiding judge of an administrative judicial  
5 district does not assign a judge under Subsection (a) within the  
6 time prescribed by that subsection, the presiding judge of the  
7 statutory probate courts may assign a judge to hear the case instead  
8 of the presiding judge of the administrative judicial district  
9 making the assignment under that subsection.

10           (c) The provisions of Section 25.0022 applicable to a judge  
11 assigned under that section apply to the same extent to a judge  
12 assigned under the authority of this section.

13           SECTION 3. Section 25.00255, Government Code, is amended by  
14 amending Subsections (f), (g), (h), and (i) and adding Subsections  
15 (g-1), (i-1), (i-2), (i-3), (i-4), (i-5), (l), and (m) to read as  
16 follows:

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

20               (1) recuse or disqualify himself or herself; or  
21               (2) request the assignment of a judge to hear the  
22 motion by forwarding the motion and opposing and concurring  
23 statements to the presiding judge of the statutory probate courts  
24 as provided by Subsection (h).

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

26               (1) shall enter an order of recusal and:  
27                     (A) if the judge serves a statutory probate court

1 located in a county with only one statutory probate court, request  
2 that the presiding judge of the administrative judicial district  
3 assign [~~statutory probate courts request the assignment of~~] a judge  
4 under Section 25.002201 to hear the case; or

5 (B) subject to Subsection (1), if the judge  
6 serves a statutory probate court located in a county with more than  
7 one statutory probate court, request that the clerk who serves the  
8 statutory probate courts in that county randomly reassign the case  
9 to a judge of one of the other statutory probate courts located in  
10 the county [~~motion for recusal or disqualification as provided by~~  
11 ~~Subsection (i)]~~; and

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

14 (g-1) A judge who disqualifies himself or herself:

15 (1) shall enter an order of disqualification and  
16 request that the presiding judge of the administrative judicial  
17 district assign a judge under Section 25.002201 to hear the case;  
18 and

19 (2) may not take other action in the case.

20 (h) A judge who does not recuse or disqualify himself or  
21 herself:

22 (1) shall forward to the presiding judge of the  
23 statutory probate courts, in either original form or certified  
24 copy, an order of referral, the motion for recusal or  
25 disqualification, and all opposing and concurring statements; and

26 (2) may not take other action in the case during the  
27 time after the filing of the motion for recusal or disqualification

1 and before a hearing on the motion, except for good cause stated in  
2 the order in which the action is taken.

3 (i) After receiving a request under Subsection [~~(g) or~~] (h),  
4 the presiding judge of the statutory probate courts shall  
5 immediately forward the request to the presiding judge of the  
6 administrative judicial district and request that the presiding  
7 judge of the administrative judicial district assign a judge to  
8 hear the motion for recusal or disqualification. Not later than the  
9 15th day after the date [~~On receipt of the request,~~] the presiding  
10 judge of the administrative judicial district receives the request,  
11 the presiding judge shall:

12 (1) [~~immediately~~] set a hearing before himself or  
13 herself or a judge designated by the presiding judge, except that  
14 the presiding judge may not designate a judge of a statutory probate  
15 court in the same county as the statutory probate court served by  
16 the judge who is the subject of the motion;

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

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

21 (i-1) If the presiding judge of the administrative judicial  
22 district does not assign a judge to hear a motion for recusal or  
23 disqualification within the time prescribed by Subsection (i), the  
24 presiding judge of the statutory probate courts may assign a judge  
25 to hear the motion and take other action under that subsection.

26 (i-2) A judge who hears a motion for recusal or  
27 disqualification under Subsection (i) or (i-1) may also hear any

1 amended or supplemented motion for recusal or disqualification  
2 filed in the case.

3 (i-3) If a motion for recusal or disqualification is granted  
4 after a hearing conducted as provided by Subsection (i) or (i-1),  
5 the judge who heard the motion shall:

6 (1) if the judge subject to recusal or  
7 disqualification serves a statutory probate court located in a  
8 county with only one statutory probate court, enter an order of  
9 recusal or disqualification, as appropriate, and request that the  
10 presiding judge of the administrative judicial district assign a  
11 judge under Section 25.002201 to hear the case; or

12 (2) subject to Subsection (1), if the judge subject to  
13 recusal or disqualification serves a statutory probate court  
14 located in a county with more than one statutory probate court,  
15 enter an order of recusal or disqualification, as appropriate, and  
16 request that the clerk who serves the statutory probate courts in  
17 that county randomly reassign the case to a judge of one of the  
18 other statutory probate courts located in the county.

19 (i-4) The presiding judge of an administrative judicial  
20 district may delegate the judge's authority to make orders of  
21 interim or ancillary relief under Subsection (i)(3) to the  
22 presiding judge of the statutory probate courts.

23 (i-5) A judge assigned to hear a motion for recusal or  
24 disqualification under Subsection (i) is entitled to receive the  
25 same salary, compensation, and expenses, and to be paid in the same  
26 manner and from the same fund, as a judge otherwise assigned under  
27 Section 25.0022, except that a judge assigned under Subsection (i)

1 shall provide the information required by Section 25.0022(1) to the  
2 presiding judge of the administrative judicial district, who shall  
3 immediately forward the information to the presiding judge of the  
4 statutory probate courts.

5 (1) If a clerk of a statutory probate court is unable to  
6 reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2)  
7 because the other statutory probate court judges in the county have  
8 been recused or disqualified or are otherwise unavailable to hear  
9 the case, the clerk shall immediately notify the presiding judge of  
10 the administrative judicial district and request that the presiding  
11 judge of the administrative judicial district assign a judge under  
12 Section 25.002201 to hear the case.

13 (m) The clerk of a statutory probate court shall immediately  
14 notify and provide to the presiding judge of the statutory probate  
15 courts a copy of an order of recusal or disqualification issued with  
16 respect to the judge of the statutory probate court.

17 SECTION 4. Section 54.604, Government Code, is amended by  
18 amending Subsection (d) and adding Subsections (e), (f), (g), and  
19 (h) to read as follows:

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

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

24 (2) ~~[(3)]~~ the commissioners court does not  
25 appropriate funds in the county's budget to pay the salary of the  
26 associate judge.

27 (e) If an associate judge serves a single court and the



1 appointing judge vacates the judge's office, the associate judge's  
2 employment continues, subject to Subsections (d) and (h), unless  
3 the successor appointed or elected judge terminates that  
4 employment.

5 (f) If an associate judge serves two courts and one of the  
6 appointing judges vacates the judge's office, the associate judge's  
7 employment continues, subject to Subsections (d) and (h), unless  
8 the successor appointed or elected judge terminates that employment  
9 or the judge of the other court served by the associate judge  
10 terminates that employment as provided by Subsection (c).

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

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

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

21 (h) Notwithstanding the powers of an associate judge  
22 provided by Section 54.610, an associate judge whose employment  
23 continues as provided by Subsection (e), (f), or (g) after the judge  
24 of a court served by the associate judge vacates the judge's office  
25 may perform administrative functions with respect to that court,  
26 but may not perform any judicial function, including any power  
27 prescribed by Section 54.610, with respect to that court until a

1 successor judge is appointed or elected.

2 SECTION 5. Section 54.610, Government Code, is amended to  
3 read as follows:

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

- 6 (1) conduct a hearing;
- 7 (2) hear evidence;
- 8 (3) compel production of relevant evidence;
- 9 (4) rule on the admissibility of evidence;
- 10 (5) issue a summons for the appearance of witnesses;
- 11 (6) examine a witness;
- 12 (7) swear a witness for a hearing;
- 13 (8) make findings of fact on evidence;
- 14 (9) formulate conclusions of law;
- 15 (10) recommend an order to be rendered in a case;
- 16 (11) regulate all proceedings in a hearing before the  
17 associate judge; ~~and~~

18 (12) take action as necessary and proper for the  
19 efficient performance of the associate judge's duties;

20 (13) order the attachment of a witness or party who  
21 fails to obey a subpoena;

22 (14) order the detention of a witness or party found  
23 guilty of contempt, pending approval by the referring court as  
24 provided by Section 54.616;

25 (15) without prejudice to the right to a de novo  
26 hearing under Section 54.618, render and sign:

27 (A) a final order agreed to in writing as to both

form and substance by all parties;

(B) a final default order;

(C) a temporary order;

(D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;

(E) an order specifying that the court clerk shall issue:

(i) letters testamentary or of administration; or

(ii) letters of guardianship; or

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

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

(b) An associate judge may, in the interest of justice, 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.

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

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

1 waiver.

2 SECTION 6. Section 54.612, Government Code, is amended by  
3 amending Subsections (a), (b), and (c) and adding Subsection (e) to  
4 read as follows:

5 (a) A court reporter may be provided ~~[is not required]~~  
6 during a hearing held by an associate judge appointed under this  
7 subchapter unless required by other law. A court reporter is  
8 required to be provided when the associate judge presides over a  
9 jury trial.

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

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

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

21 SECTION 7. Section 54.614, Government Code, is amended to  
22 read as follows:

23 Sec. 54.614. REPORT. (a) The associate judge's report may  
24 contain the associate judge's findings, conclusions, or  
25 recommendations. The associate judge shall prepare a written  
26 report in the form directed by the referring court, including in the  
27 form of:

1           (1) [~~—The form may be~~] a notation on the referring  
2 court's docket sheet; or

3           (2) a proposed order.

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

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

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

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

11           (3) by facsimile transmission.

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

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

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

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

25           SECTION 8. The heading to Section 54.615, Government Code,  
26 is amended to read as follows:

27           Sec. 54.615. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE

1 REFERRING COURT ~~[APPEAL]~~.

2 SECTION 9. Subsection (a), Section 54.615, Government Code,  
3 is amended to read as follows:

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

7 SECTION 10. Section 54.616, Government Code, is amended to  
8 read as follows:

9 Sec. 54.616. ORDER OF COURT. (a) Pending a de novo hearing  
10 before ~~[appeal of the associate judge's report to]~~ the referring  
11 court, a proposed order or judgment ~~[the decisions and~~  
12 ~~recommendations]~~ of the associate judge has ~~[judge's report have]~~  
13 the force and effect, and is ~~[are]~~ enforceable as, an order or  
14 judgment of the referring court, except for an order ~~[orders]~~  
15 providing for ~~[incarceration or for]~~ the appointment of a receiver.

16 (b) Except as provided by Section 54.610(c), if a request  
17 for a de novo hearing before ~~[If an appeal to]~~ the referring court  
18 is not timely filed or the right to a de novo hearing before ~~[an~~  
19 ~~appeal to]~~ the referring court is waived, the proposed order or  
20 judgment ~~[findings and recommendations]~~ of the associate judge  
21 becomes ~~[become]~~ the order or judgment of the referring court at the  
22 time the judge of the referring court signs the proposed ~~[an]~~ order  
23 or judgment ~~[conforming to the associate judge's report]~~.

24 SECTION 11. Section 54.617, Government Code, is amended to  
25 read as follows:

26 Sec. 54.617. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED  
27 ORDER OR JUDGMENT ~~[REPORT]~~. (a) Unless a party files a written

1 request for a de novo hearing before the referring court ~~[notice of~~  
2 ~~appeal]~~, the referring court may:

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

5 (2) hear further evidence; or

6 (3) recommit the matter to the associate judge for  
7 further proceedings.

8 (b) The judge of the referring court shall sign a proposed  
9 order or judgment the court adopts as provided by Subsection (a)(1)  
10 not later than the 30th day after the date the associate judge  
11 signed the order or judgment.

12 SECTION 12. Section 54.618, Government Code, is amended to  
13 read as follows:

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

21 (b) A request for a de novo hearing under this section must  
22 specify the issues that will be presented ~~[An appeal]~~ to the  
23 referring court ~~[must be made in writing and specify the findings~~  
24 ~~and conclusions of the associate judge to which the party objects.~~  
25 ~~The appeal is limited to the findings and conclusions specified in~~  
26 ~~the written appeal]~~.

27 (c) In the de novo hearing before the referring court, the

1 ~~[The]~~ parties may present witnesses ~~[on appeal to the referring~~  
2 ~~court as in a hearing de novo]~~ on the issues specified ~~[raised]~~ in  
3 the request for hearing ~~[appeal]~~. The referring court may also  
4 consider the record from the hearing before the associate judge,  
5 including the charge to and verdict returned by a jury, if the  
6 record was taken by a court reporter.

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

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

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

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

25 (h) The denial of relief to a party after a de novo hearing  
26 under this section or a party's waiver of the right to a de novo  
27 hearing before the referring court does not affect the right of a



1 party to file a motion for new trial, motion for judgment  
2 notwithstanding the verdict, or other post-trial motion.

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

6 SECTION 13. Section 54.619, Government Code, is amended to  
7 read as follows:

8 Sec. 54.619. APPELLATE REVIEW. (a) A party's failure to  
9 request a de novo hearing before ~~[Failure to appeal to]~~ the  
10 referring court or a party's waiver of the right to request a de  
11 novo hearing before ~~[, by waiver or otherwise, the approval by]~~ the  
12 referring court ~~[of an associate judge's report]~~ does not deprive  
13 the ~~[a]~~ party of the right to appeal to or request other relief from  
14 a court of appeals or the supreme court.

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

19 (c) The date an order described by Section 54.610(a)(15) is  
20 signed by an associate judge is the controlling date for the purpose  
21 of an appeal to, or a request for other relief relating to the order  
22 from, a court of appeals or the supreme court.

23 SECTION 14. The changes in law made by this Act to Chapter  
24 54, Government Code, apply to a matter referred to a statutory  
25 probate court associate judge on or after the effective date of this  
26 Act. A matter referred to a statutory probate court associate judge  
27 before the effective date of this Act is governed by the law in

1 effect on the date the matter was referred to the associate judge,  
2 and the former law is continued in effect for that purpose.

3 SECTION 15. This Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 683 passed the Senate on March 19, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 30, 2009, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 683 passed the House, with amendments, on May 27, 2009, by the following vote: Yeas 148, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor