

By: Wentworth

S.B. No. 683

Substitute the following for S.B. No. 683:

By: Alonzo

C.S.S.B. No. 683

A BILL TO BE ENTITLED

AN ACT

relating to the recusal or disqualification of a statutory probate court judge and subsequent assignment of another judge.

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

SECTION 1. Sections 25.0022(d) and (h), 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;

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

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

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

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

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

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

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

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

25           (5) the presiding judge of an administrative judicial  
26 district requests the assignment of a statutory probate judge to  
27 hear a probate matter in a county court or statutory county court;

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

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

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

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

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

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

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

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

27           (4) the presiding judge of the administrative judicial

1 district receives notice and a request for assignment from the  
2 clerk of the statutory probate court under Section 25.00255(1).

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

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

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

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

19 (1) recuse or disqualify himself or herself; or

20 (2) request the assignment of a judge to hear the  
21 motion by forwarding the motion and opposing and concurring  
22 statements to the presiding judge of the statutory probate courts  
23 as provided by Subsection (h).

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

25 (1) shall enter an order of recusal and:

26 (A) if the judge serves a statutory probate court  
27 located in a county with only one statutory probate court, request

that the presiding judge of the administrative judicial district  
assign ~~[statutory probate courts request the assignment of]~~ a judge  
under Section 25.002201 to hear the case; or

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

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

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

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

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

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

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

(2) may not take other action in the case during the  
time after the filing of the motion for recusal or disqualification  
and before a hearing on the motion, except for good cause stated in

1 the order in which the action is taken.

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

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

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

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

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

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

1 filed in the case.

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

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

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

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

22 (i-5) A judge assigned to hear a motion for recusal or  
23 disqualification under Subsection (i) is entitled to receive the  
24 same salary, compensation, and expenses, and to be paid in the same  
25 manner and from the same fund, as a judge otherwise assigned under  
26 Section 25.0022, except that a judge assigned under Subsection (i)  
27 shall provide the information required by Section 25.0022(1) to the

1 presiding judge of the administrative judicial district, who shall  
2 immediately forward the information to the presiding judge of the  
3 statutory probate courts.

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

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

16 SECTION 4. This Act takes effect September 1, 2009.