

BILL ANALYSIS

Senate Research Center
82R22798 YDB-F

H.B. 3475
By: Gallego (West)
Jurisprudence
5/12/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1999, the legislature passed into law Section 29.012 (Sitting for Disqualified or Recused Judge), Government Code. It provides that when a municipal judge is disqualified or recused, a judge from another municipal court located in an adjacent municipality may sit for that judge. Under this provision, however, a municipal judge may not sit in a case for another judge if either party objects in writing before the first pre-trial hearing or trial over which the judge is to preside.

Critics claim that Section 29.012 leaves too many important questions unanswered and that its gross lack of procedures are inconsistent with procedures used in other Texas trial courts.

In comparison to other trial courts in Texas, the law governing recusal or disqualification without a motion by a party in a municipal court is complicated by the variance in municipal court organization authorized by state law. To further complicate matters, there is widespread disagreement about the applicability of Texas Rule of Civil Procedure 18a. Though the Texas Rules of Civil Procedure do not generally govern proceedings in criminal cases, the Court of Criminal Appeals in *Arnold v. State*, 853 S.W.2d 543 (Tex. Crim. App. 1993) held that absent clear legislative intent, Rule 18a, which contains procedures for the recusal of a judge, applies in criminal cases.

There is a conflict in law between the *Arnold* opinion and Section 29.012, Government Code. The conflict has resulted in disagreement among municipal judges, the presiding judges of the administrative judicial regions and attorneys. Despite arguments that Section 29.012 governs recusal and disqualification of municipal judges, at least one municipal judge has been sanctioned by the State Commission on Judicial Conduct for failing to follow Texas Rule of Civil Procedure 18a.

In 2010, the Texas Municipal Courts Association passed a resolution requesting that Section 29.012 of the Government Code be amended in manner that resolves the perceived conflict in law. In 2011, the Texas Judicial Council passed a similar resolution.

H.B. 3475 repeals the existing language in Section 29.012, Government Code, and introduces a more detailed set of procedures relating to the recusal and disqualification in municipal courts. These procedures are adapted from Texas Rule of Civil Procedure 18a to meet the needs of both the smallest municipal courts (courts that may have only one judge) and the largest municipal courts (courts that may have 20 or more judges). H.B. 3475 also repeals Section 22.073(c), Local Government Code, relating to a secretary of a municipality's duty to report certain matters to the Texas Judicial Council.

H.B. 3475 amends current law relating to the recusal and disqualification of municipal judges.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 29, Government Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. RECUSAL OR DISQUALIFICATION OF MUNICIPAL JUDGES

Sec. 29.051. DEFINITIONS. Defines, in this chapter "active judge," "presiding judge," and "regional presiding judge."

Sec. 29.052. MOTION FOR RECUSAL OR DISQUALIFICATION. (a) Authorizes a party in a hearing or trial in a municipal court, including a municipal court of record, to file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge. Authorizes the grounds to include any disability of the judge to preside over the case.

(b) Requires that a motion for the recusal or disqualification of a municipal judge:

(1) be filed at least 10 days before the date of the hearing or trial, except as provided by Subsection (c);

(2) be verified; and

(3) state with particularity the alleged grounds for recusal or disqualification of the judge based on personal knowledge that is supported by admissible evidence, or specifically stated grounds for belief of the allegations.

(c) Requires that a motion for recusal or disqualification be filed at the earliest practicable time before the beginning of the trial or other hearing if a judge is assigned to a case 10 or fewer days before the date set for a trial or hearing.

Sec. 29.053. NOTICE. Requires a party filing a motion for recusal or disqualification under this subchapter to serve on all other parties or their counsel copies of the motion, and notice that the movant expects the motion to be presented to the judge three days after the filing of the motion unless the judge orders otherwise.

Sec. 29.054. STATEMENT OPPOSING OR CONCURRING WITH MOTION. Authorizes a party to file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard.

Sec. 29.055. PROCEDURE FOLLOWING FILING OF MOTION; RECUSAL OR DISQUALIFICATION WITHOUT MOTION. (a) Requires the judge, before further proceedings in a case in which a motion for the recusal or disqualification of a municipal judge has been filed, to recuse or disqualify himself or herself, or request the regional presiding judge to assign a judge to hear the motion.

(b) Provides that a municipal judge who with or without a motion recuses or disqualifies himself or herself:

(1) is required to enter an order of recusal or disqualification and:

(A) if the municipal judge is not the presiding judge, request the presiding judge to assign any other judge of the municipal court, including the presiding judge, to hear the case;

(B) if the municipal judge is the presiding judge, request the regional presiding judge to assign another judge of the municipal court to hear the case; or

(C) if the municipal judge serves in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case; and

(2) is prohibited from taking other action in the case, except that a judge who recuses himself or herself for good cause may take other action as stated in the order in which the action is taken.

(c) Provides that a municipal judge who does not recuse or disqualify himself or herself:

(1) is required to forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the regional presiding judge; and

(2) is prohibited from taking 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 the order in which the action is taken.

Sec. 29.056. HEARING ON MOTION. (a) Requires a regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify to:

(1) immediately set a hearing before the regional presiding judge, an active judge, or a judge on the list of judges who are eligible to serve on assignment under Section 74.055 (List of Retired and Former Judges Subject to Assignment);

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

(3) make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require.

(b) Authorizes a judge who hears a motion for recusal or disqualification under Subsection (a) to also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(c) Authorizes a hearing under Subsection (a) or (b) to be conducted by telephone if none of the parties to an action object.

Sec. 29.057. PROCEDURE FOLLOWING GRANTING OF MOTION. (a) Requires the judge who heard the motion, if a motion for recusal or disqualification is granted after a hearing is conducted as provided by Section 29.056, to enter an order of recusal or disqualification, and:

(1) if the judge who was the subject of the motion is not the presiding judge, request that the presiding judge assign any other judge of the municipality, including the presiding judge, to hear the case;

(2) if the judge who was the subject of the motion is the presiding judge, request the regional presiding judge to assign another judge of the municipality to hear the case; or

(3) if the judge subject to recusal or disqualification is located in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case.

(b) Requires the presiding judge, if the presiding judge is unable to assign a judge of the municipality to hear a case when a municipal judge is recused or disqualified under Section 29.055 or 29.056 because there are not any other municipal judges in the municipality or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, to request the regional presiding judge to first assign a municipal judge from another municipality in the county or, if necessary, assign a municipal judge from a municipality in an adjacent county to hear the case.

(c) Authorizes the regional presiding judge, if the regional presiding judge is unable to assign a judge to hear a case when a municipal judge is recused or disqualified under Section 29.055 or 29.056 because there are not any other municipal judges in the county or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, to assign a municipal judge from a municipality in an adjacent county to hear the case.

Sec. 29.058. APPEAL. (a) Authorizes a party, after a municipal court of record has rendered a final judgment in a case, to appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion.

(b) Prohibits a party from appealing an order that grants a motion for recusal or disqualification.

Sec. 29.059. CONTEMPT. Authorizes the judge, if a party files a motion to recuse or disqualify under this subchapter and it is determined by the judge hearing the motion, at the hearing and on motion of the opposing party, that the motion to recuse or disqualify is brought solely for the purpose of delay and without sufficient cause, to in the interest of justice find the party filing the motion in contempt under Section 21.002(c) (relating to providing that only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform).

Sec. 29.060. COMPENSATION. (a) Provides that an active judge who is assigned to hear a motion to recuse or disqualify a municipal judge under this subchapter is not entitled to additional compensation other than travel expenses. Entitles a judge assigned to hear a motion to recuse or disqualify who is not an active judge, to compensation of \$450 per day of service, prorated for any day for which the judge provides less than a full day of service, and travel expenses.

(b) Entitles a municipal judge assigned under this subchapter to hear a case in a court other than the one in which the judge resides or serves to compensation provided by law for judges in similar cases and travel expenses.

(c) Requires the municipality in which a case subject to this subchapter is pending to pay the compensation and travel expenses due or incurred under this subchapter.

SECTION 2. Amends Subchapter A, Chapter 29, Government Code, by adding Section 29.013, as follows:

Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL. (a) Requires the secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body to notify the Texas Judicial Council of the name of

(1) each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court; and

(2) each person who vacates an office described by Subdivision (1).

(b) Requires the secretary or employee to notify the judicial council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office.

SECTION 3. Repealers: Section 29.012 (Sitting for Disqualified or Recused Judge), Government Code, and Section 22.073(c) (relating to requiring the secretary to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court of the municipality), Local Government Code.

SECTION 4. Provides that Subchapter A-1, Chapter 29, Government Code, as added by this Act, applies only to a hearing or trial initially filed in a municipal court on or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2011.