

By: Hartnett

H.B. No. 2372

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 25.00255(g), (g-1), (i), (i-1), (i-2), (i-3), (i-5), (k), (l), and (m), Government Code, are amended to read as follows:

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge of the statutory probate courts ~~[administrative judicial district]~~ assign 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; 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

1 request that the presiding judge of the statutory probate courts
2 ~~[administrative judicial district]~~ assign a judge under Section
3 25.002201 to hear the case; and

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

5 (i) After receiving a request under Subsection (h), the
6 presiding judge of the statutory probate courts, subject to and
7 except as provided by this section, shall ~~[immediately forward the~~
8 ~~request to the presiding judge of the administrative judicial~~
9 ~~district and request that the presiding judge of the administrative~~
10 ~~judicial district]~~ assign a judge to hear the motion for recusal or
11 disqualification. The presiding judge may not assign a judge of a
12 statutory probate court to hear a motion under this subsection if
13 the judge of the statutory probate court serves in the same county
14 as the statutory probate court judge who is the subject of the
15 motion. If the judge who is the subject of a motion for recusal or
16 disqualification serves as the presiding judge of the statutory
17 probate courts, the chief justice of the supreme court shall assign
18 a judge to hear the motion ~~[Not later than the 15th day after the~~
19 ~~date the presiding judge of the administrative judicial district~~
20 ~~receives the request, the presiding judge shall:~~

21 ~~[(1) set a hearing before himself or herself or a judge~~
22 ~~designated by the presiding judge, except that the presiding judge~~
23 ~~may not designate a judge of a statutory probate court in the same~~
24 ~~county as the statutory probate court served by the judge who is the~~
25 ~~subject of the motion;~~

26 ~~[(2) cause notice of the hearing to be given to all~~
27 ~~parties or their counsel to the case; and~~

1 ~~[(3) make other orders, including orders for interim~~
2 ~~or ancillary relief, in the pending case].~~

3 (i-1) The judge assigned to hear a motion for recusal or
4 disqualification under Subsection (i) shall:

5 (1) set a hearing;

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

8 (3) make other orders, including orders for interim or
9 ancillary relief, in the pending case [~~If the presiding judge of~~
10 ~~the administrative judicial district does not assign a judge to~~
11 ~~hear a motion for recusal or disqualification within the time~~
12 ~~prescribed by Subsection (i), the presiding judge of the statutory~~
13 ~~probate courts may assign a judge to hear the motion and take other~~
14 ~~action under that subsection].~~

15 (i-2) A judge who hears a motion for recusal or
16 disqualification under Subsection [~~(i) or~~] (i-1) may also hear any
17 amended or supplemented motion for recusal or disqualification
18 filed in the case.

19 (i-3) If a motion for recusal or disqualification is granted
20 after a hearing conducted as provided by Subsection [~~(i) or~~] (i-1),
21 the judge who heard the motion shall:

22 (1) if the judge subject to recusal or
23 disqualification serves a statutory probate court located in a
24 county with only one statutory probate court, enter an order of
25 recusal or disqualification, as appropriate, and request that the
26 presiding judge of the statutory probate courts [~~administrative~~
27 ~~judicial district~~] assign a judge under Section 25.002201 to hear

1 the case; or

2 (2) subject to Subsection (1), if the judge subject to
3 recusal or disqualification serves a statutory probate court
4 located in a county with more than one statutory probate court,
5 enter an order of recusal or disqualification, as appropriate, and
6 request that the clerk who serves the statutory probate courts in
7 that county randomly reassign the case to a judge of one of the
8 other statutory probate courts located in the county.

9 (i-5) A judge assigned to hear a motion for recusal or
10 disqualification under Subsection (i) is entitled to receive the
11 same salary, compensation, and expenses, and to be paid in the same
12 manner and from the same fund, as a judge otherwise assigned under
13 Section 25.0022 [~~, except that a judge assigned under Subsection (i)~~
14 ~~shall provide the information required by Section 25.0022(1) to the~~
15 ~~presiding judge of the administrative judicial district, who shall~~
16 ~~immediately forward the information to the presiding judge of the~~
17 ~~statutory probate courts]~~.

18 (k) A party may file a motion for sanctions alleging that
19 another party in the case filed a motion for the recusal or
20 disqualification of a judge solely to delay the case and without
21 sufficient cause. The presiding judge of the statutory probate
22 courts [~~administrative judicial district~~] or the judge assigned to
23 hear the motion for recusal may approve a motion for sanctions
24 authorized by Rule 215.2(b), Texas Rules of Civil Procedure.

25 (l) If a clerk of a statutory probate court is unable to
26 reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2)
27 because the other statutory probate court judges in the county have

1 been recused or disqualified or are otherwise unavailable to hear
2 the case, the clerk shall immediately notify the presiding judge of
3 the statutory probate courts [~~administrative judicial district~~]
4 and request that the presiding judge of the statutory probate
5 courts [~~administrative judicial district~~] assign a judge under
6 Section 25.002201 to hear the case.

7 (m) The clerk of a statutory probate court shall immediately
8 notify and provide to the presiding judge of the statutory probate
9 courts a copy of an order of recusal or disqualification issued with
10 respect to the judge of a [~~the~~] statutory probate court.

11 SECTION 2. Sections 25.002201(a) and (b), Government Code,
12 are amended to read as follows:

13 (a) Not later than the 15th day after the date an order of
14 recusal or disqualification of a statutory probate court judge is
15 issued in a case, the presiding judge of the statutory probate
16 courts, except as provided by Subsection (b), [~~administrative~~
17 ~~judicial district~~] shall assign a statutory probate court judge or
18 a former or retired judge of a statutory probate court to hear the
19 case if:

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

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

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

26 (4) the presiding judge of the statutory probate
27 courts [~~administrative judicial district~~] receives notice and a

1 request for assignment from the clerk of the statutory probate
2 court under Section 25.00255(1).

3 (b) If the [~~presiding~~] judge who is the subject of an order
4 of recusal or disqualification is [~~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, the chief justice of the supreme court
8 shall [~~may~~] assign a statutory probate court judge or a former or
9 retired judge of a statutory probate court to hear the case [~~instead~~
10 ~~of the presiding judge of the administrative judicial district~~
11 ~~making the assignment under that subsection~~].

12 SECTION 3. Section 25.00255(i-4), Government Code, is
13 repealed.

14 SECTION 4. The changes in law made by this Act apply only to
15 a motion for recusal or disqualification of a judge that is filed on
16 or after the effective date of this Act. A motion for recusal or
17 disqualification of a judge filed before the effective date of this
18 Act is governed by the law in effect on the date the motion was
19 filed, and the former law is continued in effect for that purpose.

20 SECTION 5. This Act takes effect September 1, 2011.