

By: Gallego

H.B. No. 3475

A BILL TO BE ENTITLED

AN ACT

relating to the recusal and disqualification of municipal judges pursuant to the Code of Criminal Procedure.

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

SECTION 1. Chapter 45, Code of Criminal Procedure, Subchapter D, is amended by adding Article 45.204 to read as follows:

Art. 45.204. Recusal or Disqualification of Municipal Judges

(a) For purposes of this Section:

(1) "County judge" refers to:

(A) a local administrative statutory county court judge under Section 74.0911, Government Code, or

(B) if there is no statutory county court judge, a judge of a county court or other proper court that hears appeals from a municipal court, including a municipal court of record.

(2) "Presiding judge" refers to the presiding judge of a municipal court, including a municipal court of record.

(b) A party in a hearing or trial in a municipal court may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. The grounds may include any disability of the judge to preside over the case.

(c) A motion for the recusal or disqualification of a municipal judge must:

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

3           (2) be verified; and

4           (3) state with particularity the alleged grounds for  
5 recusal or disqualification of the judge based on:

6                   (A) personal knowledge that is supported by  
7 admissible evidence; or

8                   (B) specifically stated grounds for belief of the  
9 allegations.

10          (d) A motion for recusal or disqualification may be filed at  
11 the earliest practicable time before the beginning of the trial or  
12 other hearing if a judge is assigned to a case 10 or fewer days  
13 before the date set for a trial or hearing.

14          (e) A party filing a motion for recusal or disqualification  
15 shall serve on all other parties or their counsel:

16                   (1) copies of the motion; and

17                   (2) notice that the movant expects the motion to be  
18 presented to the judge three days after the filing of the motion  
19 unless the judge orders otherwise.

20          (f) A party may file with the clerk of the court a statement  
21 opposing or concurring with a motion for recusal or  
22 disqualification at any time before the motion is heard.

23          (g) Before further proceedings in a case in which a motion  
24 for the recusal or disqualification of a municipal judge has been  
25 filed, the judge shall:

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

27                   (2) request the assignment of a judge to hear the

motion by forwarding the motion and opposing and concurring statements to the appropriate judge as provided by Subsection (i).

(h) A municipal judge who recuses or disqualifies himself or herself:

(1) shall enter an order of recusal or disqualification and:

(A) if the municipal judge is not the presiding judge, request that the presiding judge assign another judge of the municipal court to hear the case; or

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

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

(2) the judge:

(A) in the case of a recusal, may not take other action in the case except for good cause stated in the order in which the action is taken; or

(B) in the case of a disqualification, may not take other action in the case.

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

(1) shall forward in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to:

1                   (A) the presiding judge, if the municipal judge  
2 is not the presiding judge; or

3                   (B) the county judge, if the municipal judge is  
4 the presiding judge or the only judge of the municipality; and

5                   (2) may not take other action in the case during the  
6 time after the filing of the motion for recusal or disqualification  
7 and before a hearing on the motion, except for good cause stated in  
8 the order in which the action is taken.

9                   (j) A presiding judge or county judge who receives a request  
10 under Subsection (i) shall immediately set a hearing before himself  
11 or herself or some other municipal judge designated by the  
12 presiding judge or county judge and, shall cause notice of such  
13 hearing to be given to all parties or their counsel, and shall make  
14 such other orders including orders on interim or ancillary relief  
15 in the pending cause as justice may require.

16                   (k) A judge who hears a motion for recusal or  
17 disqualification under Subsection (j) may also hear any amended or  
18 supplemented motion for recusal or disqualification filed in the  
19 case.

20                   (l) If a motion for recusal or disqualification is granted  
21 after a hearing conducted as provided by Subsection (j), the judge  
22 who heard the motion shall enter an order of recusal or  
23 disqualification, and:

24                   (1) if the judge who heard the motion is a presiding  
25 judge, the presiding judge may:

26                   (A) hear the case;

27                   (B) assign another judge of the municipality to

1 hear the case; or

2 (C) request a county judge to assign another  
3 judge to hear the case.

4 (2) if the judge who heard the motion is not the  
5 presiding judge, request that a county judge assign another judge  
6 of the municipality to hear the case.

7 (m) If the judge subject to recusal or disqualification is  
8 located in a municipality with only one municipal judge, the county  
9 judge shall assign a judge of another municipal court in the county  
10 to hear the case.

11 (n) After a municipal court of record has rendered a final  
12 judgement in a case, a party may appeal an order that denies a  
13 motion for recusal or disqualification as an abuse of the court's  
14 discretion. A party may not appeal an order that grants a motion  
15 for recusal or disqualification.

16 (o) If a party files a motion to recuse under this rule and  
17 it is determined by the presiding judge, county judge, or the judge  
18 designated by a presiding judge or county judge at the hearing and  
19 on motion of the opposite party, that the motion to recuse is  
20 brought solely for the purpose of delay and without sufficient  
21 cause, the judge hearing the motion may in the interest of justice  
22 find the party filing the motion in contempt, under Section  
23 21.002(c), Government Code.

24 (p) If the county judge is unable to assign a judge to hear a  
25 motion to recuse or disqualify or to hear the case when the judge is  
26 recused or disqualified, because there are no other municipal court  
27 judges in the county or all of the municipal court judges have been

1 recused or disqualified or are otherwise unavailable to hear the  
2 case, the county judge may assign a municipal court judge from a  
3 municipality in an adjacent county.

4 (g) A judge assigned pursuant to this Section shall receive  
5 compensation and travel expenses as provided by law for regular  
6 judges in similar cases.

7 SECTION 2. Chapter 29, Government Code, is amended by  
8 adding Sec. 29.013 to read as follows:

9 Sec. 29.013 DUTIES OF CITY SECRETARY. The secretary of the  
10 municipality in a municipality with a municipal court, including a  
11 municipal court of record, shall notify the Texas Judicial Council  
12 of the name of each person who is elected or appointed as mayor,  
13 municipal court judge, or clerk of a municipal court. The secretary  
14 shall notify the judicial council within 30 days after the date of  
15 the person's election, appointment, or vacancy from office.

16 Section 3. Section 22.073, Local Government Code, is  
17 amended to read as follows:

18 Sec. 22.073. POWERS AND DUTIES OF SECRETARY. (a) The  
19 secretary of the municipality shall attend each meeting of the  
20 governing body of the municipality and shall keep, in a record  
21 provided for that purpose, accurate minutes of the governing body's  
22 proceedings.

23 (b) The secretary shall:

24 (1) engross and enroll all laws, resolutions, and  
25 ordinances of the governing body;

26 (2) keep the corporate seal;

27 (3) take charge of, arrange, and maintain the records

1 of the governing body;

2 (4) countersign all commissions issued to municipal  
3 officers and all licenses issued by the mayor, and keep a record of  
4 those commissions and licenses; and

5 (5) prepare all notices required under any regulation  
6 or ordinance of the municipality.

7 ~~(c) The secretary shall notify the Texas Judicial~~  
8 ~~Council of the name of each person who is elected or appointed as~~  
9 ~~mayor, municipal court judge, or clerk of a municipal court of the~~  
10 ~~municipality. The secretary shall notify the judicial council~~  
11 ~~within 30 days after the date of the person's election or~~  
12 ~~appointment.~~

13 ~~(d)~~ (c) The secretary shall draw all the warrants on the  
14 treasurer, countersign the warrants, and keep, in a record provided  
15 for that purpose, an accurate account of the warrants.

16 ~~(e)~~ (d) The secretary serves as the general accountant of  
17 the municipality and shall keep regular accounts of the municipal  
18 receipts and disbursements. The secretary shall keep each cause of  
19 receipt and disbursement separately and under proper headings. The  
20 secretary shall also keep separate accounts with each person,  
21 including each officer, who has monetary transactions with the  
22 municipality. The secretary shall credit accounts allowed by  
23 proper authority and shall specify the particular transaction to  
24 which each entry applies. The secretary shall keep records of the  
25 accounts and other information covered by this subsection.

26 ~~(f)~~ (e) The secretary shall keep a register of bonds and  
27 bills issued by the municipality and all evidence of debt due and

1 payable to the municipality, noting the relevant particulars and  
2 facts as they occur.

3 ~~(g)~~ (f) The secretary shall carefully keep all contracts  
4 made by the governing body.

5 ~~(h)~~ (g) The secretary shall perform all other duties  
6 required by law, ordinance, resolution, or order of the governing  
7 body.

8 SECTION 4. Section 29.012 of the Government Code is  
9 repealed.

10 Section 5. This Act takes effect September 1, 2011.