

1-1 By: Gallego (Senate Sponsor - West) H.B. No. 3475
1-2 (In the Senate - Received from the House May 12, 2011;
1-3 May 12, 2011, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2011, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the recusal and disqualification of municipal judges.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 29, Government Code, is amended by
1-11 adding Subchapter A-1 to read as follows:

1-12 SUBCHAPTER A-1. RECUSAL OR DISQUALIFICATION OF MUNICIPAL JUDGES

1-13 Sec. 29.051. DEFINITIONS. In this chapter:

1-14 (1) "Active judge" means a person who holds office as a
1-15 district court judge or statutory county court judge.

1-16 (2) "Presiding judge" means the presiding judge of a
1-17 municipal court, including a municipal court of record.

1-18 (3) "Regional presiding judge" means the presiding
1-19 judge of the administrative judicial region appointed under Section
1-20 74.005.

1-21 Sec. 29.052. MOTION FOR RECUSAL OR DISQUALIFICATION. (a) A
1-22 party in a hearing or trial in a municipal court, including a
1-23 municipal court of record, may file with the clerk of the court a
1-24 motion stating grounds for the recusal or disqualification of the
1-25 municipal judge. The grounds may include any disability of the
1-26 judge to preside over the case.

1-27 (b) A motion for the recusal or disqualification of a
1-28 municipal judge must:

1-29 (1) be filed at least 10 days before the date of the
1-30 hearing or trial, except as provided by Subsection (c);

1-31 (2) be verified; and

1-32 (3) state with particularity the alleged grounds for
1-33 recusal or disqualification of the judge based on:

1-34 (A) personal knowledge that is supported by
1-35 admissible evidence; or

1-36 (B) specifically stated grounds for belief of the
1-37 allegations.

1-38 (c) A motion for recusal or disqualification must be filed
1-39 at the earliest practicable time before the beginning of the trial
1-40 or other hearing if a judge is assigned to a case 10 or fewer days
1-41 before the date set for a trial or hearing.

1-42 Sec. 29.053. NOTICE. A party filing a motion for recusal or
1-43 disqualification under this subchapter shall serve on all other
1-44 parties or their counsel:

1-45 (1) copies of the motion; and

1-46 (2) notice that the movant expects the motion to be
1-47 presented to the judge three days after the filing of the motion
1-48 unless the judge orders otherwise.

1-49 Sec. 29.054. STATEMENT OPPOSING OR CONCURRING WITH
1-50 MOTION. A party may file with the clerk of the court a statement
1-51 opposing or concurring with a motion for recusal or
1-52 disqualification at any time before the motion is heard.

1-53 Sec. 29.055. PROCEDURE FOLLOWING FILING OF MOTION; RECUSAL
1-54 OR DISQUALIFICATION WITHOUT MOTION. (a) Before further proceedings
1-55 in a case in which a motion for the recusal or disqualification of a
1-56 municipal judge has been filed, the judge shall:

1-57 (1) recuse or disqualify himself or herself; or

1-58 (2) request the regional presiding judge to assign a
1-59 judge to hear the motion.

1-60 (b) A municipal judge who with or without a motion recuses
1-61 or disqualifies himself or herself:

1-62 (1) shall enter an order of recusal or
1-63 disqualification and:

1-64 (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) may not take 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) 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 the regional presiding judge; 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 the order in which the action is taken.

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

(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;

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

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

Sec. 29.057. PROCEDURE FOLLOWING GRANTING OF MOTION. (a) If a motion for recusal or disqualification is granted after a hearing is conducted as provided by Section 29.056, the judge who heard the motion shall 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) 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, the presiding judge shall 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) 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, the regional presiding judge may

assign a municipal judge from a municipality in an adjacent county to hear the case.

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

(b) A party may not appeal an order that grants a motion for recusal or disqualification.

Sec. 29.059. CONTEMPT. 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, the judge may in the interest of justice find the party filing the motion in contempt under Section 21.002(c).

Sec. 29.060. COMPENSATION. (a) 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. A judge assigned to hear a motion to recuse or disqualify who is not an active judge is entitled to:

(1) compensation of \$450 per day of service, prorated for any day for which the judge provides less than a full day of service; and

(2) travel expenses.

(b) 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 is entitled to compensation provided by law for judges in similar cases and travel expenses.

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

SECTION 2. Subchapter A, Chapter 29, Government Code, is amended by adding Section 29.013 to read as follows:

Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL. (a) 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 shall 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) The secretary or employee shall 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. The following sections are repealed:

(1) Section 29.012, Government Code; and

(2) Section 22.073(c), Local Government Code.

SECTION 4. 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. This Act takes effect September 1, 2011.

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