

By: Naishtat

H.B. No. 3669

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. Section 25.00255, Government Code, is amended to read as follows:

Sec. 25.00255. RECUSAL OR DISQUALIFICATION OF JUDGE. (a) A party in a case [~~hearing or trial~~] in a statutory probate court may seek to recuse or disqualify a judge who is sitting in the case by filing a motion [~~file~~] with the clerk of the court in which the case is pending. ~~The [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.~~

~~[(b) A] motion:~~

(1) must [~~for the recusal or disqualification of a judge must:~~

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

~~[(2)] be verified;~~

(2) must assert one or more of the grounds listed in Rule 18b, Texas Rules of Civil Procedure;

(3) may not be based solely on the judge's ruling in the case; and

(4) must [~~(3)~~] state with detail and particularity

1 facts that [~~the alleged grounds for recusal or disqualification of~~  
2 ~~the judge based on~~]:

3 (A) are within the affiant's personal knowledge,  
4 except that facts may be stated on information and belief if the  
5 basis for the belief is specifically stated;

6 (B) would be [~~is supported by~~] admissible in  
7 evidence; and

8 (C) if proven, would be sufficient to justify  
9 recusal or disqualification [~~or~~

10 [~~(B) specifically stated grounds for belief of~~  
11 ~~the allegations~~].

12 (b) [~~(c)~~] A motion to recuse or disqualify shall [~~for~~  
13 ~~recusal or disqualification may~~] be filed as soon as [~~at the~~  
14 ~~earliest~~] practicable after the movant knows of the ground stated  
15 in the motion. A motion to recuse may not be filed after the 10th  
16 day [~~time before the beginning of the trial or other hearing if a~~  
17 ~~judge is assigned to a case 10 or fewer days~~] before the date set for  
18 a trial or other hearing unless, before that day, the movant did not  
19 know and reasonably should not have known that:

20 (1) the judge whose recusal is sought would preside at  
21 the trial or hearing; or

22 (2) the ground stated in the motion existed.

23 (c) Any party other than the judge who is the subject of the  
24 recusal or disqualification motion may before the motion is heard  
25 file a response to the motion.

26 (d) A party filing a motion [~~for recusal~~] or response under  
27 this section [~~disqualification~~] shall serve a copy on each [~~all~~]

1 other party to the case. The method used for service of the copy  
2 must be the same as the method used for filing the motion unless  
3 that method is not available for service [~~parties or their counsel:~~  
4           ~~(1) copies of the motion; and~~  
5           ~~(2) notice that the movant expects the motion to be~~  
6 ~~presented to the judge three days after the filing of the motion~~  
7 ~~unless the judge orders otherwise].~~

8           (e) The [~~A party may file with the~~] clerk of the court shall  
9 immediately deliver:

10                   (1) to the respondent judge and the presiding judge of  
11 the statutory probate courts a copy of a motion or response filed  
12 under this section; and

13                   (2) to the presiding judge a copy of an order of  
14 recusal or referral signed and filed by a respondent judge [~~a~~  
15 ~~statement opposing or concurring with a motion for recusal or~~  
16 ~~disqualification at any time before the motion is heard].~~

17           (f) Regardless of whether [~~Before further proceedings in a~~  
18 ~~case in which~~] a motion for [~~the~~] recusal or disqualification  
19 complies with this section [~~of a judge has been filed~~], the  
20 respondent judge, not later than the third business day after the  
21 date the motion is filed, shall sign and file with the clerk either:

22                   (1) an order of recusal or disqualification [~~recuse or~~  
23 ~~disqualify himself or herself]; or~~

24                   (2) an order referring [~~request the assignment of a~~  
25 ~~judge to hear~~] the motion [~~by forwarding the motion and opposing and~~  
26 ~~concurring statements~~] to the presiding judge [~~of the statutory~~  
27 ~~probate courts as provided by Subsection (h)].~~

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

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

3 (A) if the judge serves a statutory probate court  
4 located in a county with only one statutory probate court, request  
5 that the presiding judge [~~of the administrative judicial district~~]  
6 assign a judge under Section 25.002201 to hear the case; or

7 (B) subject to Subsection (1), if the judge  
8 serves a statutory probate court located in a county with more than  
9 one statutory probate court, request that the presiding judge order  
10 [~~request that~~] the clerk who serves the statutory probate courts in  
11 that county to randomly reassign the case to a judge of one of the  
12 other statutory probate courts located in the county; and

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

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

16 (1) shall enter an order of disqualification and:

17 (A) if the judge serves a statutory probate court  
18 located in a county with only one statutory probate court, request  
19 that the presiding judge [~~of the administrative judicial district~~]  
20 assign a judge under Section 25.002201 to hear the case; or

21 (B) subject to Subsection (1), if the judge  
22 serves a statutory probate court located in a county with more than  
23 one statutory probate court, request that the presiding judge order  
24 the clerk who serves the statutory probate courts in that county to  
25 randomly reassign the case to a judge of one of the other statutory  
26 probate courts; and

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

1 (h) A judge who does not recuse or disqualify himself or  
2 herself[+]

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

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

11 (h-1) If the respondent judge fails to comply with a duty  
12 imposed by this section, the movant may notify the presiding judge.

13 (i) The ~~[After receiving a request under Subsection (h),~~  
14 ~~the]~~ presiding judge ~~[of the statutory probate courts]~~ shall rule  
15 on a referred motion or ~~[immediately forward the request to the~~  
16 ~~presiding judge of the administrative judicial district and request~~  
17 ~~that the presiding judge of the administrative judicial district]~~  
18 assign a judge to rule on ~~[hear]~~ the motion not ~~[for recusal or~~  
19 ~~disqualification. Not]~~ later than the 15th day after the date the  
20 presiding judge ~~[of the administrative judicial district]~~ receives  
21 the request, ~~[the presiding judge shall:~~

22 ~~[(1) set a hearing before himself or herself or a judge~~  
23 ~~designated by the presiding judge,~~] except that the presiding judge  
24 may not designate a judge of a statutory probate court in the same  
25 county as the statutory probate court served by the judge who is the  
26 subject of the motion. If a party files a motion to recuse or  
27 disqualify the presiding judge, in his or her capacity as

1 administrative judge of the statutory probate courts or as the  
2 judge in the case in which recusal or disqualification is  
3 requested, the presiding judge shall sign and file with the clerk a  
4 written order referring the motion to the chief justice of the  
5 supreme court for consideration.

6 (i-1) A motion to recuse that does not comply with this  
7 section may be denied without an oral hearing. The order must state  
8 the nature of the noncompliance. A motion amended to correct the  
9 stated noncompliance counts for purposes of determining whether a  
10 tertiary recusal motion has been filed under the Civil Practice and  
11 Remedies Code.

12 (i-2) A motion to disqualify may not be denied on the ground  
13 that the filing or service was not in compliance with this section.

14 (i-3) The presiding judge or judge assigned to decide the  
15 motion may issue an [+

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  
19 or ancillary order [~~relief,~~] in the pending case as justice may  
20 require.

21 (i-4) Except by order of [(i-1) If] the presiding judge or  
22 the judge assigned to decide the motion, a subpoena or discovery  
23 request may not issue to the respondent judge and may be disregarded  
24 unless accompanied by the order.

25 (i-5) A motion under this section must be heard as soon as  
26 practicable and may be heard immediately after it is referred to the  
27 presiding judge or an assigned judge. Notice of the hearing must be

1 given to all parties in the case. The hearing may be conducted by  
2 telephone on the record. Documents submitted by facsimile or  
3 e-mail, otherwise admissible under the rules of evidence, may be  
4 considered [~~of the administrative judicial district does not assign~~  
5 ~~a judge to hear a motion for recusal or disqualification within the~~  
6 ~~time prescribed by Subsection (i), the presiding judge of the~~  
7 ~~statutory probate courts may assign a judge to hear the motion and~~  
8 ~~take other action under that subsection)].~~

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

13 (i-6) [(i-3)] If a motion under this section [~~for recusal or~~  
14 ~~disqualification]~~ is granted after a hearing [~~conducted as provided~~  
15 ~~by Subsection (i) or (i-1)]], the presiding judge [~~who heard the~~  
16 ~~motion]~~ shall transfer the case to another court or assign another  
17 judge to the case and:~~

18 (1) if the judge subject to recusal or  
19 disqualification serves a statutory probate court located in a  
20 county with only one statutory probate court, the presiding judge  
21 or judge assigned to decide the motion shall enter an order of  
22 recusal or disqualification, as appropriate, and request that the  
23 presiding judge [~~of the administrative judicial district]~~ assign a  
24 judge under Section 25.002201 to hear the case; or

25 (2) subject to Subsection (1), if the judge subject to  
26 recusal or disqualification serves a statutory probate court  
27 located in a county with more than one statutory probate court, the

1 presiding judge or judge assigned to decide the motion shall enter  
2 an order of recusal or disqualification, as appropriate, and  
3 request that the clerk who serves the statutory probate courts in  
4 that county randomly reassign the case to a judge of one of the  
5 other statutory probate courts located in the county.

6 ~~(j) [(i-4) The presiding judge of an administrative~~  
7 ~~judicial district may delegate the judge's authority to make orders~~  
8 ~~of interim or ancillary relief under Subsection (i)(3) to the~~  
9 ~~presiding judge of the statutory probate courts.~~

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

19 ~~[(j) After a statutory probate court has rendered the final~~  
20 ~~judgment in a case, a party may appeal an order that denies a motion~~  
21 ~~for recusal or disqualification as an abuse of the court's~~  
22 ~~discretion. A party may not appeal an order that grants a motion~~  
23 ~~for recusal or disqualification.]~~

24 (k) After notice and hearing, the judge who hears a motion  
25 under this section may order the party or attorney who filed the  
26 motion, or both, to pay the reasonable attorney's fees and expenses  
27 incurred by other parties if the judge determines that the motion



1 was:

2 (1) groundless and filed in bad faith or for the  
3 purpose of harassment; [A party may file a motion for sanctions  
4 alleging that another party in the case filed a motion for the  
5 recusal] or

6 (2) clearly brought for unnecessary [disqualification  
7 of a judge solely to] delay [the case] and without sufficient  
8 cause[. The presiding judge of the administrative judicial  
9 district or the judge assigned to hear the motion for recusal may  
10 approve a motion for sanctions authorized by Rule 215.2(b), Texas  
11 Rules of Civil Procedure].

12 (k-1) The chief justice of the supreme court may assign  
13 judges and issue any orders authorized under this section.

14 (k-2) An order denying a motion to recuse may be reviewed  
15 only for abuse of discretion on appeal from the final judgment. An  
16 order granting a motion to recuse is final and cannot be reviewed by  
17 appeal, mandamus, or otherwise. An order granting or denying a  
18 motion to disqualify may be reviewed by mandamus and may be appealed  
19 in accordance with other law.

20 (1) If a clerk of a statutory probate court is unable to  
21 reassign a case as requested under Subsection (g)(1)(B) or (i-6)(2)  
22 [(i-3)(2)] because the other statutory probate court judges in the  
23 county have been recused or disqualified or are otherwise  
24 unavailable to hear the case, the clerk shall immediately notify  
25 the presiding judge [of the administrative judicial district] and  
26 request that the presiding judge [of the administrative judicial  
27 district] assign a judge under Section 25.002201 to hear the case.

1       ~~[(m) The clerk of a statutory probate court shall~~  
2 ~~immediately notify and provide to the presiding judge of the~~  
3 ~~statutory probate courts a copy of an order of recusal or~~  
4 ~~disqualification issued with respect to the judge of the statutory~~  
5 ~~probate court.]~~

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

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

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

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

19               (3) the order was issued under Section  
20 25.00255(i-6)(1) ~~[25.00255(i-3)(1)]~~; or

21               (4) the presiding judge of the statutory probate  
22 courts ~~[administrative judicial district]~~ receives notice and a  
23 request for assignment from the clerk of the statutory probate  
24 court under Section 25.00255(1).

25       (b) If the ~~[presiding]~~ judge who is the subject of an order  
26 of recusal or disqualification is ~~[of an administrative judicial~~  
27 ~~district does not assign a judge under Subsection (a) within the~~

1 ~~time prescribed by that subsection,~~ the presiding judge of the  
2 statutory probate courts, the chief justice of the supreme court  
3 shall [~~may~~] assign a statutory probate court judge or a former or  
4 retired judge of a statutory probate court to hear the case [~~instead~~  
5 ~~of the presiding judge of the administrative judicial district~~  
6 ~~making the assignment under that subsection~~].

7         SECTION 3. The changes in law made by this Act apply only to  
8 a motion for recusal or disqualification of a judge that is filed on  
9 or after the effective date of this Act. A motion for recusal or  
10 disqualification of a judge filed before the effective date of this  
11 Act is governed by the law in effect on the date the motion was  
12 filed, and the former law is continued in effect for that purpose.

13         SECTION 4. This Act takes effect September 1, 2013.