

1-1 By: Naishtat (Senate Sponsor - West) H.B. No. 3669
1-2 (In the Senate - Received from the House May 10, 2013;
1-3 May 10, 2013, read first time and referred to Committee on
1-4 Jurisprudence; May 16, 2013, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 16, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 3669 By: Paxton

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the recusal or disqualification of a statutory probate
1-20 judge or other judge authorized to hear probate, guardianship, or
1-21 mental health matters, and the subsequent assignment of another
1-22 judge.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Sections 25.0022(d) and (h), Government Code,
1-25 are amended to read as follows:

1-26 (d) The presiding judge shall:

1-27 (1) ensure the promulgation of local rules of
1-28 administration in accordance with policies and guidelines set by
1-29 the supreme court;

1-30 (2) advise local statutory probate court judges on
1-31 case flow management practices and auxiliary court services;

1-32 (3) perform a duty of a local administrative statutory
1-33 probate court judge if the local administrative judge does not
1-34 perform that duty;

1-35 (4) appoint an assistant presiding judge of the
1-36 statutory probate courts;

1-37 (5) call and preside over annual meetings of the
1-38 judges of the statutory probate courts at a time and place in the
1-39 state as designated by the presiding judge;

1-40 (6) call and convene other meetings of the judges of
1-41 the statutory probate courts as considered necessary by the
1-42 presiding judge to promote the orderly and efficient administration
1-43 of justice in the statutory probate courts;

1-44 (7) study available statistics reflecting the
1-45 condition of the dockets of the probate courts in the state to
1-46 determine the need for the assignment of judges under this section;

1-47 (8) compare local rules of court to achieve uniformity
1-48 of rules to the extent practical and consistent with local
1-49 conditions; and

1-50 (9) assign or order the clerk who serves the statutory
1-51 probate courts to randomly assign a judge or former or retired judge
1-52 of a statutory probate court to hear a case under Section
1-53 25.002201(a) or 25.00255, as applicable [~~the circumstances~~
1-54 ~~described by Section 25.002201(b)~~].

1-55 (h) Subject to Section 25.002201, a judge or a former or
1-56 retired judge of a statutory probate court may be assigned by the
1-57 presiding judge of the statutory probate courts to hold court in a
1-58 statutory probate court, a county court, or any statutory court
1-59 exercising probate jurisdiction when:

1-60 (1) a statutory probate judge requests assignment of

2-1 another judge to the judge's court;

2-2 (2) a statutory probate judge is absent, disabled, or

2-3 disqualified for any reason;

2-4 (3) a statutory probate judge is present or is trying

2-5 cases as authorized by the constitution and laws of this state and

2-6 the condition of the court's docket makes it necessary to appoint an

2-7 additional judge;

2-8 (4) the office of a statutory probate judge is vacant;

2-9 (5) the presiding judge of an administrative judicial

2-10 district requests the assignment of a statutory probate judge to

2-11 hear a probate matter in a county court or statutory county court;

2-12 (6) the statutory probate ~~[presiding]~~ judge is ~~[of the~~

2-13 ~~administrative judicial district fails to timely assign a judge to~~

2-14 ~~replace a]~~ recused or disqualified ~~[statutory probate court judge]~~

2-15 as described by Section 25.002201(a) ~~[Section 25.002201(b)]~~;

2-16 (7) a county court judge requests the assignment of a

2-17 statutory probate judge to hear a probate matter in the county

2-18 court; or

2-19 (8) a local administrative statutory probate court

2-20 judge requests the assignment of a statutory probate judge to hear a

2-21 matter in a statutory probate court.

2-22 SECTION 2. Sections 25.002201(a) and (b), Government Code,

2-23 are amended to read as follows:

2-24 (a) Except as provided by Subsection (b), not ~~[Not]~~ later

2-25 than the 15th day after the date an order of recusal or

2-26 disqualification of a statutory probate court judge is issued in a

2-27 case, the presiding judge ~~[of the administrative judicial district]~~

2-28 shall assign a statutory probate court judge or a former or retired

2-29 judge of a statutory probate court to hear the case if:

2-30 (1) the judge of the statutory probate court recused

2-31 himself or herself under Section 25.00255(g)(1)(A);

2-32 (2) the judge of the statutory probate court

2-33 disqualified himself or herself under Section 25.00255(g-1);

2-34 (3) the order was issued under Section

2-35 25.00255(i-3)(1); or

2-36 (4) the presiding judge ~~[of the administrative~~

2-37 ~~judicial district]~~ receives notice and a request for assignment

2-38 from the clerk of the statutory probate court under Section

2-39 25.00255(l).

2-40 (b) If the ~~[presiding]~~ judge who is the subject of an order

2-41 of recusal or disqualification is ~~[of an administrative judicial~~

2-42 ~~district does not assign a judge under Subsection (a) within the~~

2-43 ~~time prescribed by that subsection,]~~ the presiding judge of the

2-44 statutory probate courts, the chief justice of the supreme court

2-45 shall ~~[may]~~ assign a regional presiding judge, a statutory probate

2-46 judge, or a former or retired judge of a statutory probate court to

2-47 hear the case ~~[instead of the presiding judge of the administrative~~

2-48 ~~judicial district making the assignment under that subsection].~~

2-49 SECTION 3. Sections 25.00255(a), (g), (g-1), (i-2), (i-3),

2-50 (i-5), and (l), Government Code, are amended to read as follows:

2-51 (a) Notwithstanding any conflicting provision in the Texas

2-52 Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil

2-53 Procedure, apply to the recusal and disqualification of a statutory

2-54 probate court judge except as otherwise provided by this section or

2-55 another provision of this subchapter. The presiding judge:

2-56 (1) has the authority and shall perform the functions

2-57 and duties of the presiding judge of the administrative judicial

2-58 region under the rules, including the duty to hear or rule on a

2-59 referred motion of recusal or disqualification or, subject to

2-60 Subdivisions (2) and (3) and to Section 25.002201, assign a judge to

2-61 hear and rule on a referred motion of recusal or disqualification;

2-62 (2) may assign a presiding judge of the administrative

2-63 judicial region to hear and rule on a referred motion of recusal or

2-64 disqualification only with the consent of the presiding judge of

2-65 the administrative judicial region; and

2-66 (3) may not assign a judge of a statutory probate court

2-67 located in the same county as the statutory probate court served by

2-68 the judge who is the subject of the motion of recusal or

2-69 disqualification ~~[A party in a hearing or trial in a statutory~~

3-1 ~~probate court may file with the clerk of the court a motion stating~~
3-2 ~~grounds for the recusal or disqualification of the judge. The~~
3-3 ~~grounds may include any disability of the judge to preside over the~~
3-4 ~~case].~~

3-5 (g) A judge who recuses himself or herself:
3-6 (1) shall enter an order of recusal and:
3-7 (A) if the judge serves a statutory probate court
3-8 located in a county with only one statutory probate court, request
3-9 that the presiding judge ~~[of the administrative judicial district]~~
3-10 assign a judge under Section 25.002201 to hear the case; or

3-11 (B) subject to Subsection (1), if the judge
3-12 serves a statutory probate court located in a county with more than
3-13 one statutory probate court, request that the presiding judge order
3-14 [request that] the clerk who serves the statutory probate courts in
3-15 that county to randomly reassign the case to a judge of one of the
3-16 other statutory probate courts located in the county; and

3-17 (2) may not take other action in the case except for
3-18 good cause stated in the order in which the action is taken.

3-19 (g-1) A judge who disqualifies himself or herself:
3-20 (1) shall enter an order of disqualification and:

3-21 (A) if the judge serves a statutory probate court
3-22 located in a county with only one statutory probate court, request
3-23 that the presiding judge [of the administrative judicial district]
3-24 assign a judge under Section 25.002201 to hear the case; or

3-25 (B) subject to Subsection (1), if the judge
3-26 serves a statutory probate court located in a county with more than
3-27 one statutory probate court, request that the presiding judge order
3-28 the clerk who serves the statutory probate courts in that county to
3-29 randomly reassign the case to a judge of one of the other statutory
3-30 probate courts; and

3-31 (2) may not take other action in the case.

3-32 (i-2) A judge who hears a motion for recusal or
3-33 disqualification ~~[under Subsection (i) or (i-1)]~~ may also hear any
3-34 amended or supplemented motion for recusal or disqualification
3-35 filed in the case.

3-36 (i-3) If a motion for recusal or disqualification is granted
3-37 ~~[after a hearing conducted as provided by Subsection (i) or (i-1)]~~,
3-38 the presiding judge [who heard the motion] shall transfer the case
3-39 to another court or assign another judge to the case and:

3-40 (1) if the judge subject to recusal or
3-41 disqualification serves a statutory probate court located in a
3-42 county with only one statutory probate court, the presiding judge
3-43 or judge assigned to decide the motion shall enter an order of
3-44 recusal or disqualification, as appropriate, and request that the
3-45 presiding judge [of the administrative judicial district] assign a
3-46 judge under Section 25.002201 to hear the case; or

3-47 (2) subject to Subsection (1), if the judge subject to
3-48 recusal or disqualification serves a statutory probate court
3-49 located in a county with more than one statutory probate court, the
3-50 presiding judge or judge assigned to decide the motion shall enter
3-51 an order of recusal or disqualification, as appropriate, and
3-52 request that the clerk who serves the statutory probate courts in
3-53 that county randomly reassign the case to a judge of one of the
3-54 other statutory probate courts located in the county.

3-55 (i-5) A judge assigned to hear a motion for recusal or
3-56 disqualification ~~[under Subsection (i)]~~ is entitled to receive the
3-57 same salary, compensation, and expenses, and to be paid in the same
3-58 manner and from the same fund, as a judge otherwise assigned under
3-59 Section 25.0022 ~~[, except that a judge assigned under Subsection (i)~~
3-60 ~~shall provide the information required by Section 25.0022(1) to the~~
3-61 ~~presiding judge of the administrative judicial district, who shall~~
3-62 ~~immediately forward the information to the presiding judge of the~~
3-63 ~~statutory probate courts].~~

3-64 (1) If a clerk of a statutory probate court is unable to
3-65 reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2)
3-66 because the other statutory probate court judges in the county have
3-67 been recused or disqualified or are otherwise unavailable to hear
3-68 the case, the clerk shall immediately notify the presiding judge
3-69 ~~[of the administrative judicial district]~~ and request that the

4-1 presiding judge [~~of the administrative judicial district~~] assign a
4-2 judge under Section 25.002201 to hear the case.

4-3 SECTION 4. Section 26.012, Government Code, is amended to
4-4 read as follows:

4-5 Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE,
4-6 GUARDIANSHIP, AND MENTAL HEALTH MATTERS. If the county judge is
4-7 absent, incapacitated, recused, or disqualified to act in a
4-8 probate, guardianship, or mental health matter, a visiting judge
4-9 shall be assigned in accordance with Section 25.0022(h).

4-10 SECTION 5. The following are repealed:

4-11 (1) Sections 25.00255(b), (c), (d), (e), (f), (h),
4-12 (i), (i-4), and (j), Government Code; and

4-13 (2) Section 25.002201(c), Government Code.

4-14 SECTION 6. The changes in law made by this Act apply only to
4-15 a motion for recusal or disqualification of a judge that is filed on
4-16 or after the effective date of this Act. A motion for recusal or
4-17 disqualification of a judge filed before the effective date of this
4-18 Act is governed by the law in effect on the date the motion was
4-19 filed, and the former law is continued in effect for that purpose.

4-20 SECTION 7. This Act takes effect September 1, 2013.

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