

By: Thompson of Harris

H.B. No. 2858

A BILL TO BE ENTITLED

AN ACT

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

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

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

(d) The presiding judge shall:

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

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

(3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;

(4) appoint an assistant presiding judge of the statutory probate courts;

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

(6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the

1 presiding judge to promote the orderly and efficient administration
2 of justice in the statutory probate courts;

3 (7) study available statistics reflecting the
4 condition of the dockets of the probate courts in the state to
5 determine the need for the assignment of judges under this section;

6 (8) compare local rules of court to achieve uniformity
7 of rules to the extent practical and consistent with local
8 conditions; and

9 (9) assign or order the clerk who serves the statutory
10 probate courts to randomly assign a judge or former or retired judge
11 of a statutory probate court to hear a case under Section
12 25.002201(a) or 25.00255, as applicable [~~the circumstances~~
13 ~~described by Section 25.002201(b)~~].

14 (h) Subject to Section 25.002201, a judge or a former or
15 retired judge of a statutory probate court may be assigned by the
16 presiding judge of the statutory probate courts to hold court in a
17 statutory probate court, a county court, or any statutory court
18 exercising probate jurisdiction when:

19 (1) a statutory probate judge requests assignment of
20 another judge to the judge's court;

21 (2) a statutory probate judge is absent, disabled, or
22 disqualified for any reason;

23 (3) a statutory probate judge is present or is trying
24 cases as authorized by the constitution and laws of this state and
25 the condition of the court's docket makes it necessary to appoint an
26 additional judge;

27 (4) the office of a statutory probate judge is vacant;

1 (5) the presiding judge of an administrative judicial
2 district requests the assignment of a statutory probate judge to
3 hear a probate matter in a county court or statutory county court;

4 (6) the statutory probate ~~[presiding]~~ judge is ~~[of the~~
5 ~~administrative judicial district fails to timely assign a judge to~~
6 ~~replace a]~~ recused or disqualified ~~[statutory probate court judge]~~
7 as described by Section 25.002201(a) ~~[Section 25.002201(b)]~~;

8 (7) a county court judge requests the assignment of a
9 statutory probate judge to hear a probate matter in the county
10 court; or

11 (8) a local administrative statutory probate court
12 judge requests the assignment of a statutory probate judge to hear a
13 matter in a statutory probate court.

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

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

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

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

26 (3) the order was issued under Section
27 25.00255(i-3)(1); or

1 (4) the presiding judge ~~[of the administrative~~
2 ~~judicial district]~~ receives notice and a request for assignment
3 from the clerk of the statutory probate court under Section
4 [25.00255](#)(1).

5 (b) If the ~~[presiding]~~ judge who is the subject of an order
6 of recusal or disqualification is ~~[of an administrative judicial~~
7 ~~district does not assign a judge under Subsection (a) within the~~
8 ~~time prescribed by that subsection,]~~ the presiding judge of the
9 statutory probate courts, the chief justice of the supreme court
10 shall ~~[may]~~ assign a regional presiding judge, a statutory probate
11 judge, or a former or retired judge of a statutory probate court to
12 hear the case ~~[instead of the presiding judge of the administrative~~
13 ~~judicial district making the assignment under that subsection]~~.

14 SECTION 3. Section [25.00255](#), Government Code, is amended by
15 amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and (l)
16 and adding Subsection (a-1) to read as follows:

17 (a) Notwithstanding any conflicting provision in the Texas
18 Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil
19 Procedure, apply to the recusal and disqualification of a statutory
20 probate court judge except as otherwise provided by this section or
21 another provision of this subchapter. The presiding judge:

22 (1) has the authority and shall perform the functions
23 and duties of the presiding judge of the administrative judicial
24 region under the rules, including the duty to hear or rule on a
25 referred motion of recusal or disqualification or, subject to
26 Subdivisions (2) and (3) and to Section [25.002201](#), assign a judge to
27 hear and rule on a referred motion of recusal or disqualification;

1 (2) may assign a presiding judge of the administrative
2 judicial region to hear and rule on a referred motion of recusal or
3 disqualification only with the consent of the presiding judge of
4 the administrative judicial region; and

5 (3) may not assign a judge of a statutory probate court
6 located in the same county as the statutory probate court served by
7 the judge who is the subject of the motion of recusal or
8 disqualification ~~[A party in a hearing or trial in a statutory~~
9 ~~probate court may file with the clerk of the court a motion stating~~
10 ~~grounds for the recusal or disqualification of the judge. The~~
11 ~~grounds may include any disability of the judge to preside over the~~
12 ~~case].~~

13 (a-1) Notwithstanding Rule 18a(h), Texas Rules of Civil
14 Procedure, or any other conflicting provision of the rules, the
15 judge who hears a motion of recusal or disqualification, after
16 notice and hearing, may:

17 (1) order the party or attorney who filed the motion,
18 or both, to pay the reasonable attorney's fees and expenses
19 incurred by another party if the judge determines that the motion
20 was:

21 (A) groundless and filed in bad faith or for the
22 purpose of harassment; or

23 (B) clearly brought for unnecessary delay and
24 without sufficient cause; and

25 (2) enjoin the movant from filing other recusal
26 motions in the case without the prior written consent of the
27 presiding judge of the statutory probate courts.

(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 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 presiding judge order [~~request that~~] the clerk who serves the statutory probate courts in that county to 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:

(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 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 presiding judge order the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts; and

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

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

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

9 (1) if the judge subject to recusal or
10 disqualification serves a statutory probate court located in a
11 county with only one statutory probate court, the presiding judge
12 or judge assigned to decide the motion shall enter an order of
13 recusal or disqualification, as appropriate, and request that the
14 presiding judge [~~of the administrative judicial district~~] assign a
15 judge under Section [25.002201](#) to hear the case; or

16 (2) subject to Subsection (1), if the judge subject to
17 recusal or disqualification serves a statutory probate court
18 located in a county with more than one statutory probate court, the
19 presiding judge or judge assigned to decide the motion shall enter
20 an order of recusal or disqualification, as appropriate, and
21 request that the clerk who serves the statutory probate courts in
22 that county randomly reassign the case to a judge of one of the
23 other statutory probate courts located in the county.

24 (i-5) A judge assigned to hear a motion for recusal or
25 disqualification [~~under Subsection (i)~~] is entitled to receive the
26 same salary, compensation, and expenses, and to be paid in the same
27 manner and from the same fund, as a judge otherwise assigned under

1 Section 25.0022~~[, except that a judge assigned under Subsection (i)~~
2 ~~shall provide the information required by Section 25.0022(1) to the~~
3 ~~presiding judge of the administrative judicial district, who shall~~
4 ~~immediately forward the information to the presiding judge of the~~
5 ~~statutory probate courts]~~.

6 (1) If a clerk of a statutory probate court is unable to
7 reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2)
8 because the other statutory probate court judges in the county have
9 been recused or disqualified or are otherwise unavailable to hear
10 the case, the clerk shall immediately notify the presiding judge
11 ~~[of the administrative judicial district]~~ and request that the
12 presiding judge ~~[of the administrative judicial district]~~ assign a
13 judge under Section 25.002201 to hear the case.

14 SECTION 4. Section 26.012, Government Code, is amended to
15 read as follows:

16 Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE,
17 GUARDIANSHIP, AND MENTAL HEALTH MATTERS. If the county judge is
18 absent, incapacitated, recused, or disqualified to act in a
19 probate, guardianship, or mental health matter, a visiting judge
20 shall be assigned in accordance with Section 25.0022(h).

21 SECTION 5. The following are repealed:

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

24 (2) Section 25.002201(c), Government Code.

25 SECTION 6. The changes in law made by this Act apply only to
26 a motion for recusal or disqualification of a judge that is filed on
27 or after the effective date of this Act. A motion for recusal or

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1 disqualification of a judge filed before the effective date of this
2 Act is governed by the law in effect on the date the motion was
3 filed, and the former law is continued in effect for that purpose.

4 SECTION 7. This Act takes effect September 1, 2015.