By:  Clardy (Senate Sponsor - Zaffirini) H.B. No. 2893

(In the Senate - Received from the House May 3, 2023; May 5, 2023, read first time and referred to Committee on Jurisprudence; May 15, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 0; May 15, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hughes            X

Johnson              X

Creighton            X

Hinojosa             X

Middleton            X

COMMITTEE SUBSTITUTE FOR H.B. No. 2893 By:  Hughes

A BILL TO BE ENTITLED

AN ACT

relating to the procedures for transferring certain cases and proceedings between courts.

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

SECTION 1.  Section 33.101, Estates Code, is amended to read as follows:

Sec. 33.101.  TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 [~~make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form~~] to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

SECTION 2.  Section 33.102(a), Estates Code, is amended to read as follows:

(a)  If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting the file for the proceeding in accordance with the procedures provided by Section 33.105 to the proper court in that county [~~in electronic or paper form:~~

[~~(1)  the original file in the case; and~~

[~~(2)  certified copies of all entries that have been made in the judge's probate docket in the proceeding~~].

SECTION 3.  Section 33.103(b), Estates Code, is amended to read as follows:

(b)  The clerk of the court from which the probate proceeding described by Subsection (a) is transferred shall transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 to the court to which the proceeding is transferred[~~:~~

[~~(1) the original file in the proceeding; and~~

[~~(2) a certified copy of the index~~].

SECTION 4.  Subchapter C, Chapter 33, Estates Code, is amended by adding Section 33.105 to read as follows:

Sec. 33.105.  TRANSFER OF PROBATE PROCEEDING RECORD. (a) If a probate proceeding is transferred to a court in another county under this chapter, the clerk of the transferring court shall send to the clerk of the court to which the proceeding is transferred, using the electronic filing system established under Section 72.031, Government Code:

(1)  a transfer certificate and index of transferred documents;

(2)  a copy of each final order;

(3)  a copy of the order of transfer signed by the transferring court;

(4)  a copy of the original papers filed in the transferring court, including a copy of any will;

(5)  a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6)  a bill of any costs accrued in the transferring court.

(b)  The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System under Section 72.037, Government Code, when transferring a proceeding under this section.

(c)  The clerk of the transferring court shall keep a copy of the documents transferred under Subsection (a).

(d)  The clerk of the court to which the proceeding is transferred shall:

(1)  accept documents transferred under Subsection (a);

(2)  docket the proceeding; and

(3)  notify, using the electronic filing system established under Section 72.031, Government Code, all parties to the proceeding, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the proceeding has been docketed.

(e)  The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (d) but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(f)  The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but must include a copy of the transfer certificate and index of transferred documents with each document produced.

(g)  Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

(h)  The clerk of the transferring court shall deliver the original will, or the copy of the will offered for probate in lieu of a lost original will, as applicable, to the clerk of the transferee court by:

(1)  registered or certified mail, return receipt requested;

(2)  common or contract carrier, with proof of delivery receipt; or

(3)  designated delivery service, as defined by 26 U.S.C. Section 7502(f)(2), with proof of delivery receipt.

(i)  The party requesting the transfer shall pay the cost of delivery under Subsection (h).

SECTION 5.  Section 1023.006, Estates Code, is amended to read as follows:

Sec. 1023.006.  TRANSFER OF RECORD. (a) Not later than the 10th working day after the date [~~When~~] an order of transfer is signed [~~made~~] under Section 1023.005, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk's fee, the clerk shall send, using the electronic filing system established under Section 72.031, Government Code, [~~transmit in electronic or paper form~~] to the county clerk of the county to which the guardianship was ordered transferred:

(1)  a transfer certificate and index of transferred documents [~~the case file of the guardianship proceedings~~]; [~~and~~]

(2)  a copy of each final order;

(3)  a copy of the order of transfer signed by the transferring court;

(4)  a copy of the original papers filed in the transferring court;

(5)  a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6)  a bill of any costs accrued in the transferring court [~~a certified copy of the index of the guardianship records~~].

(b)  The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System under Section 72.037, Government Code, when transferring a proceeding under this section.

(c)  The clerk of the transferring court shall keep a copy of the documents transferred under Subsection (a).

(d)  Subject to Section 1023.005(c), the clerk of the court to which the proceeding is transferred shall:

(1)  accept documents transferred under Subsection (a);

(2)  docket the case; and

(3)  notify, using the electronic filing system established under Section 72.031, Government Code, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the case has been docketed.

(e)  The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (d), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(f)  The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but must include a copy of the transfer certificate and index of transferred documents with each document produced.

(g)  Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

SECTION 6.  Section 1023.007, Estates Code, is amended to read as follows:

Sec. 1023.007.  TRANSFER EFFECTIVE. The order transferring a guardianship does not take effect until the clerk of the court to which the proceeding is transferred accepts and dockets the case record under Section 1023.006[~~:~~

[~~(1)  the case file and a certified copy of the index required by Section 1023.006 are filed in electronic or paper form in the office of the county clerk of the county to which the guardianship was ordered transferred; and~~

[~~(2)  a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in electronic or paper form in the court ordering the transfer by the county clerk of the county to which the guardianship was ordered transferred~~].

SECTION 7.  Sections 155.207(a), (b), and (e), Family Code, are amended to read as follows:

(a)  Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send, using the electronic filing system established under Section 72.031, Government Code, to the proper court [~~in the county~~] to which transfer is being made:

(1)  a transfer certificate and index of transferred documents;

(2)  a copy of each final order;

(3)  a copy of the order of transfer signed by the transferring court;

(4)  a copy of the original papers filed in the transferring court;

(5)  a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6)  a bill of any costs that have accrued in the transferring court.

(b)  The clerk of the transferring court shall keep a copy of the documents transferred under Subsection (a) [~~transferred pleadings~~].

(e)  The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) and must [~~filed in a case transferred under this section, but shall also~~] include a copy of the transfer certificate and index of transferred documents with each document produced.

SECTION 8.  Section 51.3071, Government Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a)  If a case is transferred from a district court to a constitutional or statutory county court or another district court, the clerk of the transferring [~~district~~] court shall send to the [~~county~~] clerk of the court to which the case is transferred, using the electronic filing system established under Section 72.031:

(1)  a transfer certificate and index of transferred documents;

(2)  a copy of the original papers filed in the transferring court;

(3)  a copy of the order of transfer signed by the transferring court;

(4)  a copy of each final order;

(5)  a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6)  a bill of any costs that have accrued in the transferring court.

(f)  The clerks of both the transferee and transferring courts may each produce, under this chapter, certified or uncertified copies of documents transferred under Subsection (a) and must include a copy of the transfer certificate and index of transferred documents with each document produced.

(g)  This section applies regardless of whether the transferee court and the transferring court are in the same or different counties.

SECTION 9.  Section 51.403, Government Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a)  If a case is transferred from a county court to a district court or to a statutory county court or county court of another county, the clerk of the transferring [~~county~~] court shall send to the [~~district~~] clerk of the court to which the case is transferred, using the electronic filing system established under Section 72.031:

(1)  a transfer certificate and index of transferred documents;

(2)  a copy of the original papers filed in the transferring court;

(3)  a copy of the order of transfer signed by the transferring court;

(4)  a copy of each final order;

(5)  a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6)  a bill of any costs that have accrued in the transferring court.

(d)  The clerks of both the transferee and transferring courts may each produce, under this chapter, certified or uncertified copies of documents transferred under Subsection (a) and must include a copy of the transfer certificate and index of transferred documents with each document produced.

(e)  This section applies to a case transferred between a district court and a county court regardless of whether the transferee court and the transferring court are in the same or different counties. A case transferred between two county courts in the same county is not subject to the requirements of this section. The clerk serving the county courts shall reassign the case on receipt of an order of transfer.

SECTION 10.  Section 72.037(a), Government Code, is amended to read as follows:

(a)  The office shall develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of cases and proceedings under Sections 33.105 and 1023.006, Estates Code, Section 155.207, Family Code, and Sections 51.3071 and 51.403 of this code.

SECTION 11.  Section 33.103(c), Estates Code, is repealed.

SECTION 12.  As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall adopt rules and develop and make available all forms and materials required by Section 72.037, Government Code, as amended by this Act.

SECTION 13.  This Act takes effect September 1, 2023.

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