

SUBJECT: Allowing a tax master to practice law before the appointing court.

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 5 ayes — Thompson, Capelo, Hinojosa, Solis, Uresti
0 nays
4 absent — Hartnett, Deshotel, Garcia, Talton

WITNESSES: None

BACKGROUND: Tax Code, sec. 33.71 permits the district court to appoint a master to hear evidence in a suit to collect delinquent taxes. Currently, the code does not guarantee that an attorney with a standing appointment to serve as a tax master for a court may continue to practice law before that court.

DIGEST: HB 1876 would amend the Tax Code to clarify that attorneys who are appointed to serve as a master for a court are not disqualified from practicing law before that same court if they are otherwise qualified to do so.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY: HB 1876 is needed to recruit attorneys to serve as tax masters, because currently there are not enough cases to make the master's duties a full time job. Moreover, there is no reason to prohibit masters from practicing before their appointing court, so long as the master does not represent a party to a tax case and there is no conflict between their duties.

HB 1876 would not create an appearance of impropriety by allowing a master to practice before his or her appointing court. For instance, attorneys who are appointed to serve as defense counsel for indigent criminal defendants are not prohibited from representing other clients in cases before the appointing court. Tax masters are no more connected to the judge than court-appointed defense attorneys. Further, some county prosecutors and district attorneys only serve part-time while maintaining a private practice before the trial courts, and these public and private functions are not seen to

conflict. Also, masters appointed under Health and Safety Code, sec. 574.025(c) to conduct probable cause hearings in civil commitment cases are specifically guaranteed the right to practice before the appointing court.

OPPONENTS
SAY:

This bill would authorize actions that possibly could raise an appearance of impropriety. Currently, if there is such an appearance, the opposing attorney can move to disqualify the master. This bill would prohibit such motions, and thus, would eliminate the court's ability to avoid situations that possibly could arise that might appear unethical.

OTHER
OPPONENTS
SAY:

This bill is unnecessary because nothing in the statute currently prohibits masters from practicing before a court that appoints them as a master. The Tax Code provides the requirements for an appointee. Refraining from practicing before the appointing court is not a requirement.