

BILL ANALYSIS

Senate Research Center

S.B. 683
By: Wentworth
Jurisprudence
9/24/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 406, 80th Legislature, Regular Session, 2007, made changes to the Government Code, requiring the presiding judge of statutory probate courts to request the presiding judge of the administrative judicial district to assign a judge to hear a recusal motion. However, current law on who makes the resulting reassignment is unclear.

S.B. 683 relates to the employment, powers, and duties of and procedures for matters referred to a statutory probate court judge or associate judge.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 25.0022(d) and (h), Government Code, as follows:

(d) Requires the presiding judge to:

- (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 presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;
- (7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section;
- (8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions; and
- (9) assign a judge or former or retired judge of a statutory probate court to hear a case under the circumstances described by Section 25.002201(b) (relating to requiring a person who is a retired or former judge, before accepting an assignment as a visiting judge of a statutory probate court, to take the oath of

office required by the constitution and file the oath with the presiding judge of the statutory probate courts). Makes a nonsubstantive change.

(h) Authorizes a judge or a former or retired judge of a statutory probate court, subject to Section 25.002201, to be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction under certain circumstances, including when the presiding judge of the administrative judicial district fails to timely assign a judge to replace a recused or disqualified statutory probate court judge as described by Section 25.002201(b). Deletes existing text related to authorizing a judge or a former or retired judge of a statutory probate court to be assigned to hold court in a statutory probate court, county court, or any statutory court exercising probate jurisdiction when a motion to recuse the judge of a statutory probate court has been filed. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter B, Chapter 25, Government Code, by adding Section 25.002201, as follows:

Sec. 25.002201. ASSIGNMENT OF JUDGE ON RECUSAL OR DISQUALIFICATION. (a) Requires the presiding judge of the administrative judicial district, not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, to assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if certain conditions are met.

(b) Authorizes the presiding judge of the statutory probate courts, if the presiding judge of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection, to assign a judge to hear the case instead of the presiding judge of the administrative judicial district making the assignment under that subsection.

(c) Provides that the provisions of Section 25.0022 (Administration of Statutory Probate Courts) applicable to a judge assigned under that section apply to the same extent to a judge assigned under the authority of this section.

SECTION 3. Amends Section 25.00255, Government Code, by amending Subsections (f), (g), (h), and (i) and adding Subsections (g-1), (i-1), (i-2), (i-3), (i-4), (i-5), (l), and (m), as follows:

(f) Requires the judge, before further proceedings in a case in which a motion for the recusal or disqualification of a judge has been filed, to:

(1) recuse or disqualify himself or herself; or

(2) request the assignment of a judge to hear the motion by forwarding the motion and opposing and concurring statements to the presiding judge of the statutory probate courts as provided by Subsection (h).

(g) Requires a judge who recuses himself or herself:

(1) to 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 (l), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the clerk who serves the statutory probate courts in that county 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. Deletes existing text related to requiring a judge who recuses himself or herself to enter an order of recusal and request that the presiding judge of the statutory probate courts request the assignment of a judge to hear the motion for recusal or disqualification as provided by Subsection (i).

(g-1) Provides that a judge who disqualifies himself or herself:

(1) is required to enter an order of disqualification and request that the presiding judge of the administrative judicial district assign a judge under Section 25.002201 to hear the case; and

(2) is prohibited from taking other action in the case.

(h) Provides that a judge who does not recuse or disqualify himself or herself:

(1) is required to forward to the presiding judge of the statutory probate courts, in either original form or certified copy, an order of referral, the motion for recusal or disqualification, and all opposing and concurring statements; and

(2) is prohibited from taking other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

(i) Requires the presiding judge, not later than the 15th day after the date the presiding judge of the administrative judicial district receives the request, to take certain actions. Deletes existing text related to receiving a request under Subsection (g).

(i-1) Authorizes the presiding judge of the statutory probate courts, if the presiding judge of the administrative judicial district does not assign a judge to hear a motion for recusal or disqualification within the time prescribed by Subsection (i), to assign a judge to hear the motion and take other action under that subsection.

(i-2) Authorizes a judge who hears a motion for recusal or disqualification under Subsection (i) or (i-1) to also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) Requires the judge who heard the motion, if a motion for recusal or disqualification is granted after a hearing conducted as provided by Subsection (i) or (i-1), to:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, enter an order of recusal or disqualification, as appropriate, and request that the presiding judge of the administrative judicial district assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-4) Authorizes the presiding judge of an administrative judicial district to delegate the judge's authority to make orders of interim or ancillary relief under Subsection (i)(3) to the presiding judge of the statutory probate courts.

(i-5) Entitles a judge assigned to hear a motion for recusal or disqualification under Subsection (i) to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022, except that a judge assigned under Subsection (i) is required to provide the

information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who is required to immediately forward the information to the presiding judge of the statutory probate courts.

(l) Requires the clerk, if a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, to immediately notify the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district assign a judge under Section 25.002201 to hear the case.

(m) Requires the clerk of a statutory probate court to immediately notify and provide to the presiding judge of the statutory probate courts a copy of an order of recusal or disqualification issued with respect to the judge of the statutory probate court.

SECTION 4. Amends Section 54.604, Government Code, by amending Subsection (d) and adding Subsections (e), (f), (g), and (h), as follows:

(d) Provides that the appointment of the associate judge terminates if the associate judge becomes a candidate for election to public office; or the commissioners court does not appropriate funds in the county's budget to pay the salary of the associate judge. Deletes existing text providing that the appointment of the associate judge terminates if the appointing judge vacates the judge's office. Makes nonsubstantive changes.

(e) Provides that if an associate judge serves a single court and the appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment.

(f) Provides that if an associate judge serves two courts and one of the appointing judges vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment or the judge of the other court served by the associate judge terminates that employment as provided by Subsection (c).

(g) Provides that if an associate judge serves more than two courts and an appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless:

(1) if no successor judge has been elected or appointed, the majority of the judges of the other courts the associate judge serves vote to terminate that employment; or

(2) if a successor judge has been elected or appointed, the majority of the judges of the courts the associate judge serves, including the successor judge, vote to terminate that employment as provided by Subsection (b).

(h) Authorizes an associate judge whose employment continues as provided by Subsection (e), (f), or (g) after the judge of a court served by the associate judge vacates the judge's office, notwithstanding the powers of an associate judge provided by Section 54.610 (Powers of Associate Judge), to perform administrative functions with respect to that court, but may not perform any judicial function, including any power prescribed by Section 54.610, with respect to that court until a successor judge is appointed or elected.

SECTION 5. Amends Section 54.610, Government Code, as follows:

Sec. 54.610. POWERS OF ASSOCIATE JUDGE. (a) Authorizes an associate judge, except as limited by an order of referral, to:

(1) conduct a hearing;

- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate all proceedings in a hearing before the associate judge;
- (12) take action as necessary and proper for the efficient performance of the associate judge's duties;
- (13) order the attachment of a witness or party who fails to obey a subpoena;
- (14) order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 54.616 (Order of Court);
- (15) without prejudice to the right to a de novo hearing under Section 54.618 (Appeal to Referring Court), render and sign:

(A) a final order agreed to in writing as to both form and substance by all parties;

(B) a final default order;

(C) a temporary order;

(D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119 (Acceptance of Service), Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;

(E) an order specifying that the court clerk is required to issue:

(i) letters testamentary or of administration; or

(ii) letters of guardianship; or

(F) an order for inpatient or outpatient mental health, mental retardation, or chemical dependency services; and

(16) sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54.618. Makes nonsubstantive changes.

(b) Authorizes an associate judge, in the interest of justice, to refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

(c) Provides that an order described by Subsection (a)(15) that is rendered and signed by an associate judge constitutes an order of the referring court. Requires the judge of the

referring court to sign the order not later than the 30th day after the date the associate judge signs the order.

(d) Provides that an answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(15)(D) revokes that waiver.

SECTION 6. Amends Section 54.612, Government Code, by amending Subsections (a), (b), and (c) and adding Subsection (e), as follows:

(a) Provides that a court reporter may be provided, rather than that a court reporter is not required, during a hearing held by an associate judge appointed under this subchapter unless required by other law. Requires that a court reporter be provided when the associate judge presides over a jury trial.

(b) Authorizes a party, the associate judge, or the referring court to provide for a reporter during the hearing, if one is not otherwise provided.

(c) Authorizes the record be preserved by any means approved by the referring court, except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties. Deletes existing text authorizing that the record of a hearing before an associate judge be preserved by any means approved by the referring court.

(e) Authorizes the referring court, on a request for a de novo hearing, to consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 54.618.

SECTION 7. Amends Section 54.614, Government Code, as follows:

Sec. 54.614. REPORT. (a) Authorizes the associate judge's report to contain the associate judge's findings, conclusions, or recommendations. Requires the associate judge to prepare a written report in the form directed by the referring court, including in the form of a notation on the referring court's docket sheet or a proposed order. Makes a nonsubstantive change.

(b) Requires the associate judge, after a hearing, to provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Authorizes notice to be given to the parties in open court, by an oral statement or a copy of the associate judge's written report; by certified mail, return receipt requested or by facsimile transmission. Makes nonsubstantive changes.

(d) Provides that there is a rebuttable presumption that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile transmission. Deletes existing text requiring the associate judge to certify the date of mailing of notice by certified mail. Deletes existing text providing that notice is considered given on the third day after the date of mailing.

(e) Requires the associate judge, after a hearing conducted by an associate judge, to send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

SECTION 8. Amends the heading to Section 54.615, Government Code, to read as follows:

Sec. 54.615. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT.

SECTION 9. Amends Section 54.615(a), Government Code, as follows:

(a) Requires an associate judge to give all parties notice of the right to a de novo hearing before the referring court. Deletes existing text requiring an associate judge to give all parties notice of the right of appeal to the judge of the referring court.

SECTION 10. Amends Section 54.616, Government Code, as follows:

Sec. 54.616. ORDER OF COURT. (a) Provides that pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge has the force and effect, and is enforceable as, an order or judgment of the referring court, except for an order providing for the appointment of a receiver. Deletes existing text providing that pending appeal of the associate judge's report to the referring court, the decisions and recommendations of the associate judge's report have the force and effect, and are enforceable as, an order of the referring court, except for orders providing for incarceration or for the appointment of a receiver.

(b) Provides that, except as provided by Section 54.610(c), if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court at the time the judge of the referring court signs the proposed order or judgment. Deletes existing text providing that if an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the associate judge become the order of the referring court at the time the judge of the referring court signs an order conforming to the associate judge's report.

SECTION 11. Amends Section 54.617, Government Code, as follows:

Sec. 54.617. New heading: JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. (a) Creates this subsection from existing text. Authorizes the referring court, unless a party files a written request for a de novo hearing before the referring court, rather than a notice of appeal, to:

- (1) adopt, modify, or reject the associate judge's proposed order or judgment, rather than report;
- (2) hear further evidence; or
- (3) recommit the matter to the associate judge for further proceedings.

(b) Requires the judge of the referring court to sign a proposed order or judgment the court adopts as provided by Subsection (a)(1) not later than the 30th day after the date the associate judge signed the order or judgment.

SECTION 12. Amends Section 54.618, Government Code, as follows:

Sec. 54.618. New heading: DE NOVO HEARING BEFORE REFERRING COURT. (a) Authorizes a party to request a de novo hearing before the referring court, rather than appeal an associate judge's report, by filing with the clerk of the referring court a written request, rather than notice of appeal, not later than the seventh working day, rather than the third day, after the date the party receives notice of the substance of the associate judge's report as provided by Section 54.614.

(b) Requires that a request for a de novo hearing under this section specify the issues that will be presented to the referring court. Deletes existing text requiring that an appeal to the referring court be made in writing and specify the findings and conclusions of the associate judge to which the party objects. Deletes

existing text providing that the appeal is limited to the findings and conclusions specified in the written appeal.

(c) Authorizes the parties, in the de novo hearing before the referring court, to present witnesses on the issues specified in the request for hearing, rather than authorizes the parties to present witnesses on appeal to the referring court as in a hearing de novo on the issues raised in the appeal. Authorizes the referring court to also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(d) Requires that notice of a request for a de novo hearing before the referring court be given to the opposing attorney in the manner provided by Rule 21a (Methods of Service), Texas Rules of Civil Procedure. Makes a conforming change

(e) Authorizes any other party to file a request for a de novo hearing before the referring court not later than the seventh day after the date of filing of the initial request, if a request for a de novo hearing before the referring court is filed by a party. Makes conforming changes.

(f) Requires the referring court, after notice to the parties, to hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court, unless all of the parties agree to a later date. Makes conforming changes.

(g) Authorizes the parties to waive the right of a de novo hearing before the referring court, before the start of a hearing conducted by an associate judge. Authorizes the waiver to be in writing or on the record. Makes a conforming change.

(h) Provides that the denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) Prohibits a party from demanding a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

SECTION 13. Amends Section 54.619, Government Code, as follows:

Sec. 54.619. APPELLATE REVIEW. (a) Provides that a party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court. Deletes existing text providing that failure to appeal to the referring court, by waiver or otherwise, the approval by the referring court of an associate judge's report does not deprive a party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Provides that except as provided by Subsection (c), the date the judge of a referring court signs an order or judgment is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court. Makes a nonsubstantive change.

(c) Provides that the date an order described by Section 54.610(a)(15) is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

SECTION 14. Provides that the changes in law made by this Act to Chapter 54, Government Code, apply to a matter referred to a statutory probate court associate judge on or after the effective date of this Act. Provides that a matter referred to a statutory probate court associate judge before the effective date of this Act is governed by the law in effect on the date the matter was referred to the associate judge, and the former law is continued in effect for that purpose.

SECTION 15. Effective date: September 1, 2009.