

BILL ANALYSIS

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S.B. 1471
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the recusal rules for statutory probate courts are set forth in Section 25.00255 (Recusal or Disqualification of Judge) of the Government Code. The current recusal rules for probate courts allow for unnecessary delay to probate cases where the issues, such as exploitation and abuse of guardianships, are time sensitive.

The Texas Supreme Court recently reformed the recusal rules for district and county courts in Rule 18a of the Rules of Civil Procedure. S.B. 1471 seeks to amend the recusal rules for statutory probate courts to reflect more closely the rules that apply in district and county courts with some special considerations pertinent to statutory probate courts.

As proposed, S.B. 1471 amends current law relating to the recusal or disqualification of a statutory probate court judge and subsequent assignment of another 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 Section 25.00255, Government Code, as follows:

Sec. 25.00255. RECUSAL OR DISQUALIFICATION OF JUDGE. (a) Authorizes a party in a case in a statutory probate court to seek to recuse or disqualify a judge who is sitting in the case by filing a motion with the clerk of the court in which the case is pending. Provides that the motion:

- (1) is required to be verified;
- (2) must assert one or more of the grounds listed in Rule 18b, Texas Rules of Civil Procedure;
- (3) is prohibited from being based solely on the judge's ruling in the case; and
- (4) is required to state with detail and particularity facts that are within the affiant's personal knowledge, except that facts are authorized to be stated on information and belief if the basis for the belief is specifically stated, would be admissible in evidence and if proven, would be sufficient to justify recusal or disqualification.

Deletes existing text authorizing a party in a hearing or trial in a statutory probate court to file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. Deletes existing text authorizing the grounds to include any disability of the judge to preside over the case. Deletes existing text requiring a motion for the recusal or disqualification of a judge to be filed at least 10 days before the date of the hearing or trial, except as provided by Subsection (c); be verified; and state with particularity the

alleged grounds for removal or disqualification of the judge based on personal knowledge that is supported by admissible evidence or specifically stated grounds for belief of the allegations.

(b) Requires that a motion to recuse or disqualify be filed as soon as practicable after the movant knows of the ground stated in the motion. Prohibits a motion to recuse from being filed after the 10th day before the date set for a trial or other hearing unless, before that day, the movant did not know and reasonably should not have known that the judge whose recusal is sought would preside at the trial or hearing or the ground stated in the motion existed. Deletes existing text authorizing that a motion for the recusal or disqualification be filed at the earliest practicable time before the beginning of the trial or other hearing if a judge is assigned to a case 10 or fewer days before the date set for a trial or hearing.

(c) Authorizes any party other than the judge who is the subject of the recusal or disqualification motion to, before the motion is heard file a response to the motion.

(d) Requires that a party filing a motion or response under this section serve a copy on each other party to the case. Requires that the method used for service of the copy be the same as the method used for filing the motion unless that method is not available for service. Deletes existing text requiring that a party filing a motion for recusal or disqualification serve on all other parties or their counsel copies of the motion and notice that the movant expects the motion to be presented to the judge three days after the filing of the motion unless the judge orders otherwise.

(e) Requires the clerk of the court to immediately deliver to the respondent judge and the presiding judge of the statutory probate courts a copy of a motion or response filed under this section and to the presiding judge a copy of an order of recusal or referral signed and filed by a respondent judge. Deletes existing text authorizing a party to file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard.

(f) Requires the respondent judge, regardless of whether a motion for recusal or disqualification complies with this section, not later than the third business day after the date the motion is filed, to sign and file with the clerk either an order of recusal or disqualification or an order referring the motion to the presiding judge. Deletes existing text requiring the judge, before further proceedings in a case in which a motion for the recusal or disqualification of a judge has been filed, to recuse or disqualify himself or herself or 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 to enter an order of recusal and if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case or 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 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 located in the county. Makes a nonsubstantive change.

(g-1) Requires a judge who disqualifies himself or herself to enter an order of disqualification and if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge,

rather than the judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case or 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 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.

(h) Deletes existing text requiring a judge who does not recuse or disqualify himself or herself 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.

(h-1) Authorizes the movant, if the respondent judge fails to comply with a duty imposed by this section, to notify the presiding judge.

(i) Requires the presiding judge to rule on a referred motion or assign a judge to rule on the motion not later than the 15th day after the date the presiding judge receives the request, except that the presiding judge is prohibited from designating a judge of a statutory probate court in the same county as the statutory probate court served by the judge who is the subject of the motion. Requires the presiding judge, if a party files a motion to recuse or disqualify the presiding judge, in his or her capacity as administrative judge of the statutory probate courts or as the judge in the case in which recusal or disqualification is requested, to sign and file with the clerk a written order referring the motion to the chief justice of the supreme court for consideration.

Deletes existing text requiring the presiding judge of the statutory probate courts, after receiving a request under Subsection (h), to immediately forward the request to the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district assign a judge to hear the motion for recusal or disqualification. Deletes existing text requiring the presiding judge, not later than the 15th day after the date the presiding judge of the administrative judicial district receives the request, to set a hearing before himself or herself or a judge designated by the presiding judge, except that the presiding judge is prohibited from designating a judge of a statutory probate court in the same county as the statutory probate court served by the judge who is the subject of the motion cause notice of the hearing to be given to all parties or their counsel to the case, and make other orders, including orders for interim or ancillary order in the pending case as justice may require 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), the presiding judge of the statutory probate courts is authorized to assign a judge to hear the motion and take other action under that subsection.

(i-1) Provides that a motion to recuse that does not comply with this section may be denied without an oral hearing. Requires that the order state the nature of the noncompliance. Provides that a motion amended to correct the stated noncompliance counts for purposes of determining whether a tertiary recusal motion has been filed under the Civil Practice and Remedies Code.

(i-2) Prohibits a motion to disqualify from being denied on the ground that the filing or service was not in compliance with this section.

(i-3) Authorizes the presiding judge or judge assigned to decide the motion to issue an interim or ancillary order in the pending case as justice may require.

(i-4) Redesignates existing Subsection (i-1) as (i-4). Prohibits a subpoena or discovery request, except by order of the presiding judge or the judge assigned to decide the motion, from issuing to the respondent judge and authorizes that it be disregarded unless accompanied by the order.

(i-5) Requires that a motion under this section be heard as soon as practicable and authorizes it to be heard immediately after it is referred to the presiding judge or an assigned judge. Requires that notice of the hearing be given to all parties in the case. Authorizes the hearing to be conducted by telephone on the record. Authorizes documents submitted by facsimile or e-mail, otherwise admissible under the rules of evidence, to be considered. Authorizes a judge who hears a motion for recusal or disqualification, rather than disqualification under Subsection (i) or (i-1), to also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-6) Redesignates existing Subsection (i-3) as Subsection (i-6). Requires the presiding judge, if a motion under this section, rather than a motion for this section for recusal or disqualification, is granted after a hearing, rather than after a hearing conducted as provided by Subsection (i) or (i-1), to transfer the case to another court or assign another judge to the case and if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, the presiding judge or judge assigned to decide the motion is required to enter an order of recusal or disqualification, as appropriate, and request that the presiding judge, rather than judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case or subject to Subsection (l), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, the presiding judge or judge assigned to decide the motion is required to 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.

(j) Redesignates existing Subsection (i-5) as Subsection (j). 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(l) to the presiding judge, rather than to the presiding judge of the administrative judicial district, who is required immediately forward the information to the presiding judge of the statutory probate courts.

Deletes existing text authorizing 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. Deletes existing text authorizing a party, after a statutory probate court has rendered the final judgment in a case, to appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion. Deletes existing text prohibiting a party from appealing an order that grants a motion for recusal or disqualification.

(k) Authorizes the judge who hears a motion under this section, after notice and hearing, to order the party or attorney who filed the motion, or both, to pay the reasonable attorney's fees and expenses incurred by other parties if the judge determines that the motion was groundless and filed in bad faith or for the purpose of harassment or clearly brought for unnecessary delay and without sufficient cause. Deletes existing text authorizing a party to file a motion for sanctions alleging that another party in the case filed a motion for the recusal or disqualification of a judge solely to delay the case and without sufficient cause. Authorizes the presiding judge of the administrative judicial district or the judge assigned to hear the motion for recusal to approve a motion for sanctions authorized by Rule 215.2(b), Texas Rules of Civil Procedure.

(k-1) Authorizes the chief justice of the supreme court to assign judges and issue any orders authorized under this section.

(k-2) Authorizes an order denying a motion to recuse to be reviewed only for abuse of discretion on appeal from the final judgment. Provides that an order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise. Authorizes an order granting or denying a motion to disqualify to be reviewed by mandamus and to be appealed in accordance with other law.

(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-6)(2), rather than 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 and request that the presiding judge assign a judge under Section 25.002201 to hear the case. Makes nonsubstantive changes. Deletes text of existing Subsection (m) requiring 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 2. Amends Sections 25.002201(a) and (b), Government Code, as follows:

(a) Requires the presiding judge of the statutory probate courts, except as provided by Subsection (b), rather than 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:

(1)-(2) Makes no change to these subdivisions;

(3) the order was issued under Section 25.00255(i-6)(1), rather than under Section 25.00255(i-3)(1); or

(4) the presiding judge of the statutory probate courts, rather than the judge of the administrative judicial district, receives notice and a request for assignment from the clerk of the statutory probate court under Section 25.00255(1).

(b) Requires the chief justice of the supreme court, if the judge who is the subject of an order of recusal or disqualification is the presiding judge of the statutory probate courts, to assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case. Deletes existing text authorizing 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.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2013.