

Question

The presiding judge is the subject of a recusal motion and has failed to refer the motion to the Chief Justice of the Supreme Court of Texas as required by statute. Tex. Gov't Code § 25.00255 requires that if the presiding judge is the subject of a recusal motion, the motion must be referred to the Chief Justice of the Supreme Court for assignment of another judge to hear and rule on the motion. Failure to do so is a violation of statutory law and due process. Judge Evans's failure to follow this mandatory referral procedure is itself grounds for recusal and for vacating any orders issued in violation of the statute.

Answer (Texas)

Short response

Judge Evans's failure to refer a recusal motion against himself to the Chief Justice of the Supreme Court of Texas, as mandated by Tex. Gov't Code § 25.00255, constitutes a violation of statutory law and due process. This procedural failure is itself grounds for recusal and renders any orders issued by Judge Evans after the improper handling of the motion void.

Summary

Texas law requires that when a presiding judge is the subject of a recusal motion, the judge must either recuse themselves or refer the motion to the Chief Justice of the Supreme Court for assignment of another judge to hear and rule on the motion. The Texas Supreme Court has repeatedly held that this referral procedure is mandatory, and a judge's failure to comply with it is a violation of both statutory law and due process, resulting in the invalidation of any subsequent orders issued by that judge.

In the scenario described, Judge Evans's failure to follow the mandatory referral procedure under Tex. Gov't Code § 25.00255 is itself a basis for recusal and for vacating any orders he issued in violation of the statute. The relevant statutory provisions, administrative regulations, and controlling case law all support this conclusion, and there are no recognized exceptions that would excuse noncompliance with these requirements.

Background and Relevant Law

Legislative and Regulatory Framework

The central statutory authority governing the recusal or disqualification of judges in Texas statutory probate courts is Tex. Gov't Code § 25.00255. The statute explicitly provides that if a presiding judge is the subject of a recusal or disqualification motion, the judge must sign and file an order referring

the motion to the Chief Justice of the Supreme Court. The Chief Justice is then responsible for assigning another qualified judge to hear and rule on the motion. This process is not discretionary; the statute's language is mandatory and leaves no room for alternative procedures or judicial discretion in this context (Tex. Gov't Code § 25.00255).

Complementing this statutory requirement, [1 Tex. Admin. Code § 155.152](#) provides that if the presiding judge does not voluntarily disqualify or recuse themselves, the Chief Judge or their designee must assign another judge to consider and rule on the motion. This regulatory provision reinforces the statutory mandate and underscores the importance of impartiality and procedural fairness in the adjudication of recusal motions ([1 Tex. Admin. Code § 155.152](#)).

Case Law

The Texas Supreme Court has repeatedly interpreted and enforced the mandatory nature of the recusal referral process. In [Gonzalez v. Guilbot, 315 S.W.3d 533 \(Tex. 2010\)](#), the court held that under Tex. Gov't Code § 25.00255, a judge who is the subject of a recusal motion has only two options: grant the motion or refer it to another judge for a ruling. The court found that when a judge improperly rules on their own recusal motion, rather than referring it as required, all subsequent orders issued by that judge are void.

Similarly, in [Hudson v. Texas Children's Hosp., 177 S.W.3d 232 \(Tex. 2005\)](#), the Texas Supreme Court reaffirmed that the recuse-or-refer procedure is mandatory. The court emphasized that once a recusal motion is filed, the judge must either recuse themselves or request that the presiding judge assign another judge to hear the motion, and that any deviation from this process constitutes a violation of statutory law and due process.

In [Perritt, In re, 992 S.W.2d 444 \(Tex. 1999\)](#), the court explained that Rule 18a of the Texas Rules of Civil Procedure requires a trial judge who does not agree to recusal to refer the matter to the presiding judge of the administrative judicial district, who then has the authority to hear the motion or designate another judge to do so. The court clarified that this authority is derived from Chapter 74 of the Government Code, not merely from the rules of civil procedure, further highlighting the statutory basis for the referral requirement.

Additional secondary materials and pretrial motion authorities echo these principles, consistently stating that a judge faced with a recusal motion must either recuse themselves or refer the motion to the appropriate presiding authority for assignment to another judge (Pretrial motions (2022-05-05); Pretrial Motions (2021-08-16)).

Analysis

Statutory and Regulatory Requirements

The statutory language of Tex. Gov't Code § 25.00255 is unequivocal: when a presiding judge is the subject of a recusal motion, the judge must refer the motion to the Chief Justice of the Supreme Court for assignment of another judge. This is not a matter of judicial discretion or procedural preference; it is a mandatory legal requirement. The administrative regulation at [1 Tex. Admin. Code § 155.152](#) reinforces this mandate by specifying that if the presiding judge does not voluntarily recuse or disqualify themselves, the Chief Judge or their designee must assign another judge to consider and rule on the motion.

The rationale behind this strict procedural requirement is to ensure impartiality and maintain public confidence in the judiciary. Allowing a judge to rule on their own recusal motion would create an appearance of impropriety and undermine the fairness of the proceedings. The statutory and regulatory framework is designed to prevent such conflicts of interest and to guarantee that recusal motions are adjudicated by a neutral and independent judge.

Judicial Interpretation and Consequences of Noncompliance

The Texas Supreme Court's decisions in [Gonzalez v. Guilbot](#) and Hudson v. Texas Children's Hosp. are directly on point. In both cases, the court held that the recuse-or-refer procedure is mandatory and that a judge's failure to comply with this requirement constitutes a violation of statutory law and due process. The court in [Gonzalez v. Guilbot](#) went further, holding that when a judge improperly rules on their own recusal motion, all subsequent orders issued by that judge are void. This is a strong remedy, reflecting the seriousness with which Texas law treats violations of the recusal referral process.

The court's reasoning is grounded in the principle that a judge who is the subject of a recusal motion cannot be the arbiter of their own impartiality. The mandatory referral procedure ensures that the question of recusal is decided by a judge who is not personally implicated in the motion, thereby safeguarding the integrity of the judicial process.

The decision in [Perritt, In re](#) further clarifies that the authority to assign another judge to hear a recusal motion comes from Chapter 74 of the Government Code, not merely from procedural rules. This underscores the statutory nature of the referral requirement and reinforces the conclusion that noncompliance is a violation of statutory law.

Application to Judge Evans

Applying these authorities to the scenario involving Judge Evans, the analysis is straightforward. Judge Evans, as the presiding judge and the

subject of a recusal motion, was required by Tex. Gov't Code § 25.00255 to refer the motion to the Chief Justice of the Supreme Court for assignment of another judge. His failure to do so is a clear violation of the statute and the corresponding administrative regulation.

Under the Texas Supreme Court's decisions, this procedural failure is itself grounds for recusal. Moreover, any orders issued by Judge Evans after the improper handling of the recusal motion are void and subject to vacatur. The law does not recognize any exceptions or justifications for a judge's failure to comply with the mandatory referral procedure in this context.

Due Process Considerations

The mandatory referral procedure is not merely a technical requirement; it is a fundamental component of due process in the adjudication of recusal motions. By ensuring that recusal motions are heard by a neutral judge, the law protects the parties' right to a fair and impartial tribunal. A judge's failure to follow this procedure deprives the parties of this right and undermines the legitimacy of the judicial process.

The Texas Supreme Court's decisions make clear that due process is violated when a judge who is the subject of a recusal motion fails to refer the motion as required by law. The remedy for such a violation is the recusal of the judge and the invalidation of any orders issued in violation of the statute.

Supporting Secondary Materials

Secondary materials and pretrial motion authorities consistently reinforce the statutory and case law requirements. They state that once a sufficient motion to recuse has been filed, the judge must either recuse themselves or request the presiding judge of the administrative judicial district to assign another judge to hear the motion. These materials confirm that the referral procedure is mandatory and that failure to comply is a violation of statutory law and due process (Pretrial motions (2022-05-05); Pretrial Motions (2021-08-16)).

Exceptions and Caveats

The authorities provided do not recognize any exceptions to the mandatory referral requirement in cases where the presiding judge is the subject of a recusal motion. The statutory language is clear and unambiguous, and the Texas Supreme Court has consistently enforced the requirement without exception. There is no indication in the case law or secondary materials that a judge may excuse noncompliance with the referral procedure based on exigent circumstances, harmless error, or any other justification.

It is also important to note that the authorities provided do not indicate any subsequent negative treatment of the controlling cases. The decisions in [Gonzalez v. Guilbot](#), [Hudson v. Texas Children's Hosp.](#), and [Perritt, In re](#)

remain good law and continue to govern the handling of recusal motions in Texas statutory probate courts.

Conclusion

In summary, Texas law is unequivocal in requiring that when a presiding judge is the subject of a recusal motion, the judge must refer the motion to the Chief Justice of the Supreme Court for assignment of another judge. This referral procedure is mandatory and is grounded in both statutory law and due process principles. The Texas Supreme Court has held that a judge's failure to comply with this requirement is itself grounds for recusal and renders any subsequent orders issued by the judge void.

Judge Evans's failure to follow the mandatory referral procedure under Tex. Gov't Code § 25.00255 is a clear violation of statutory law and due process. As a result, he is subject to recusal, and any orders he issued after the improper handling of the recusal motion are void and should be vacated. The authorities provided leave no room for doubt or exception on this point, and the law is firmly established in favor of strict compliance with the recusal referral procedure.

Legal Authorities

[Perritt, In re, 992 S.W.2d 444 \(Tex. 1999\)](#)

Texas Supreme Court

Extract

Rule 18a requires a trial judge who does not agree to recuse to refer the matter to the presiding judge of the administrative judicial district, who in turn may hear the motion or designate another judge to do so. TEX.R. CIV. P. 18a(d). When the presiding judge assigns the matter to another judge, he or she does so under authority as presiding judge of the administrative judicial district. Chapter 74 of the Government Code furnishes that authority in this instance, not our rules of civil procedure.

Summary

Rule 18a mandates a trial judge to refer a recusal motion to the presiding judge of the administrative judicial district if the judge does not agree to recuse themselves. This referral is a procedural requirement, and the presiding judge's authority to assign another judge to hear the motion is derived from Chapter 74 of the Government Code. This supports the proposition that failure to follow the mandatory referral procedure is a violation of statutory law.

[In re Perritt, 992 S.W.2d 444 \(Tex. 1999\)](#)

Texas Supreme Court

Extract

Rule 18a requires a trial judge who does not agree to recusal to refer the matter to the presiding judge of the administrative judicial district, who in turn may hear the motion or designate another judge to do so. TEX. R. CIV. P. 18a(d). When the presiding judge assigns the matter to another judge, he or she does so under authority as presiding judge of the administrative judicial district. Chapter 74 of the Government Code furnishes that authority in this instance, not our rules of civil procedure.

Summary

Rule 18a mandates a trial judge who does not agree to recusal to refer the matter to the presiding judge of the administrative judicial district. This aligns with the proposition that a presiding judge, when subject to a recusal motion, must follow a specific referral procedure. The passage also emphasizes that the authority for assigning another judge comes from Chapter 74, reinforcing the statutory requirement for proper referral and assignment.

[Gonzalez v. Guilbot, 315 S.W.3d 533 \(Tex. 2010\)](#)

Texas Supreme Court

Extract

The court of appeals held that under the general 'recuse or refer' rule in Government Code section 25.00255(f), a judge against whom a recusal motion has been filed 'has only two options: grant the motion to recuse or refer the motion to another judge for a ruling.' Thus, the court concluded, 'Judge Herman erred when he ruled on his own motion to recuse' rather than referring the motion to the Chief Justice of the Supreme Court pursuant to Government Code section 74.057(a) and Texas Rule of Civil Procedure 18a(g). 'Because Judge Herman did not have the power to rule on his own recusal motion,' the court reasoned, 'all subsequent orders he entered are void.'

Summary

The passage clearly states that under Texas Government Code section 25.00255(f), a judge who is the subject of a recusal motion must either grant the motion or refer it to another judge. The failure to do so, as in the case of Judge Herman, results in the orders issued by the judge being void. This directly supports the proposition that Judge Evans's failure to refer the recusal motion is a violation of statutory law and due process, and it provides grounds for recusal and vacating orders.

[Hudson v. Texas Children's Hosp., 177 S.W.3d 232 \(Tex. 2005\)](#)

Texas Supreme Court

Extract

Once a motion to recuse is filed in statutory probate court, the trial judge has two options before taking any other action: (1) recuse himself or (2) request that the presiding judge of the statutory probate courts assign a judge to hear the motion to recuse. Tex. Gov't Code Ann. § 25.00255(f) (Vernon 2004); TEX.R. CIV. P. 18a(c). The Texas Supreme Court has held that the recuse or refer procedure is mandatory.

Summary

The passage clearly states that when a motion to recuse is filed, the trial judge must either recuse themselves or refer the motion to the presiding judge for assignment to another judge. This is described as a mandatory procedure under Tex. Gov't Code § 25.00255(f) and Texas Rule of Civil Procedure 18a(c). The Texas Supreme Court's interpretation underscores the obligatory nature of this process, which directly supports the proposition that failure to follow this procedure is a violation of statutory law and due process.

[Tex. Gov't. Code § 25.00255 Tex. Gov't. Code § 25.00255 Recusal Or Disqualification of Judge](#)

Extract

if the presiding judge is the subject of the motion of recusal or disqualification, shall sign and file with the clerk an order referring the motion to the chief justice of the supreme court for assignment of a presiding judge of an administrative judicial region, a statutory probate court judge, or a former or retired judge of a statutory probate court to hear and rule on the motion, subject to Subdivisions and.

Summary

The passage clearly states that if the presiding judge is the subject of a recusal motion, they are required to refer the motion to the Chief Justice of the Supreme Court for assignment of another judge. This is a mandatory procedure outlined in the statute. Failure to comply with this requirement would constitute a violation of statutory law, as the statute explicitly mandates this referral process. Therefore, if Judge Evans did not follow this procedure, it would be grounds for recusal and could potentially invalidate any orders issued in violation of the statute.

[1 Tex. Admin. Code § 155.152 1 Tex. Admin. Code § 155.152 Disqualification Or Recusal of Judges](#)

Extract

If the presiding judge who is the subject of the motion does not disqualify or recuse him- or herself from the case, the Chief Judge or a designee of the Chief Judge shall assign another judge to consider and rule on the motion.

Summary

The passage clearly outlines the procedure that must be followed if a presiding judge is the subject of a recusal motion. Specifically, it mandates that if the presiding judge does not voluntarily disqualify or recuse themselves, the Chief Judge or their designee must assign another judge to consider and rule on the motion. This aligns with the proposition that failure to follow such a procedure is a violation of statutory law and due process, as it ensures impartiality and fairness in judicial proceedings.

[Pretrial motions](#)

Texas Criminal Lawyer's Handbook. Volume 1-2 - James Publishing - Mark G. Daniel, Robert K. Gill - 2022-05-05

Extract

(c) Prior to any further proceedings in the case, the judge shall either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear such motion. If the judge recuses himself, he shall enter an order of recusal and request the presiding judge of the administrative judicial district to assign another judge to sit, and shall make no further orders and shall take no further action in the case except for good cause stated in the order in which such action is taken.

Summary

When a recusal motion is filed against a judge, the judge must either recuse themselves or request the presiding judge of the administrative judicial district to assign another judge to hear the motion. This aligns with the statutory requirement that the motion must be referred to the Chief Justice of the Supreme Court for assignment of another judge. Failure to follow this procedure is a violation of statutory law and due process, supporting the proposition that Judge Evans's failure to do so is grounds for recusal and for vacating any orders issued in violation of the statute.

[Pretrial Motions](#)

Extract

Once a sufficient motion to recuse has been filed, before proceeding further in the case, the judge must either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear the motion under Tex. Gov't Code §74.059(c)(3). Sanchez.

Summary

Once a motion to recuse is filed, the judge must either recuse themselves or request the presiding judge of the administrative judicial district to assign another judge to hear the motion. This aligns with the requirement in Tex. Gov't Code § 25.00255 that mandates referral to the Chief Justice of the Supreme Court for assignment of another judge. The failure to follow this procedure, as described in the proposition, would indeed be a violation of statutory law and due process.

[**Pretrial motions**](#)

Extract

When a recusal motion is filed, the trial judge against whom the motion is directed may properly make an initial decision of whether the motion is sufficient to invoke Rule 18a... Once a sufficient motion to recuse has been filed, before proceeding further in the case, the judge must either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear the motion under Tex. Gov't Code §74.059(c)(3).

Summary

Procedural requirements for a judge when a recusal motion is filed against them. It specifies that the judge must either recuse themselves or request the presiding judge of the administrative judicial district to assign another judge to hear the motion. This aligns with the statutory requirement under Tex. Gov't Code § 25.00255, which mandates referral to the Chief Justice if the presiding judge is the subject of the motion. The failure to follow this procedure, as alleged in the proposition, would indeed be a violation of statutory law and due process.