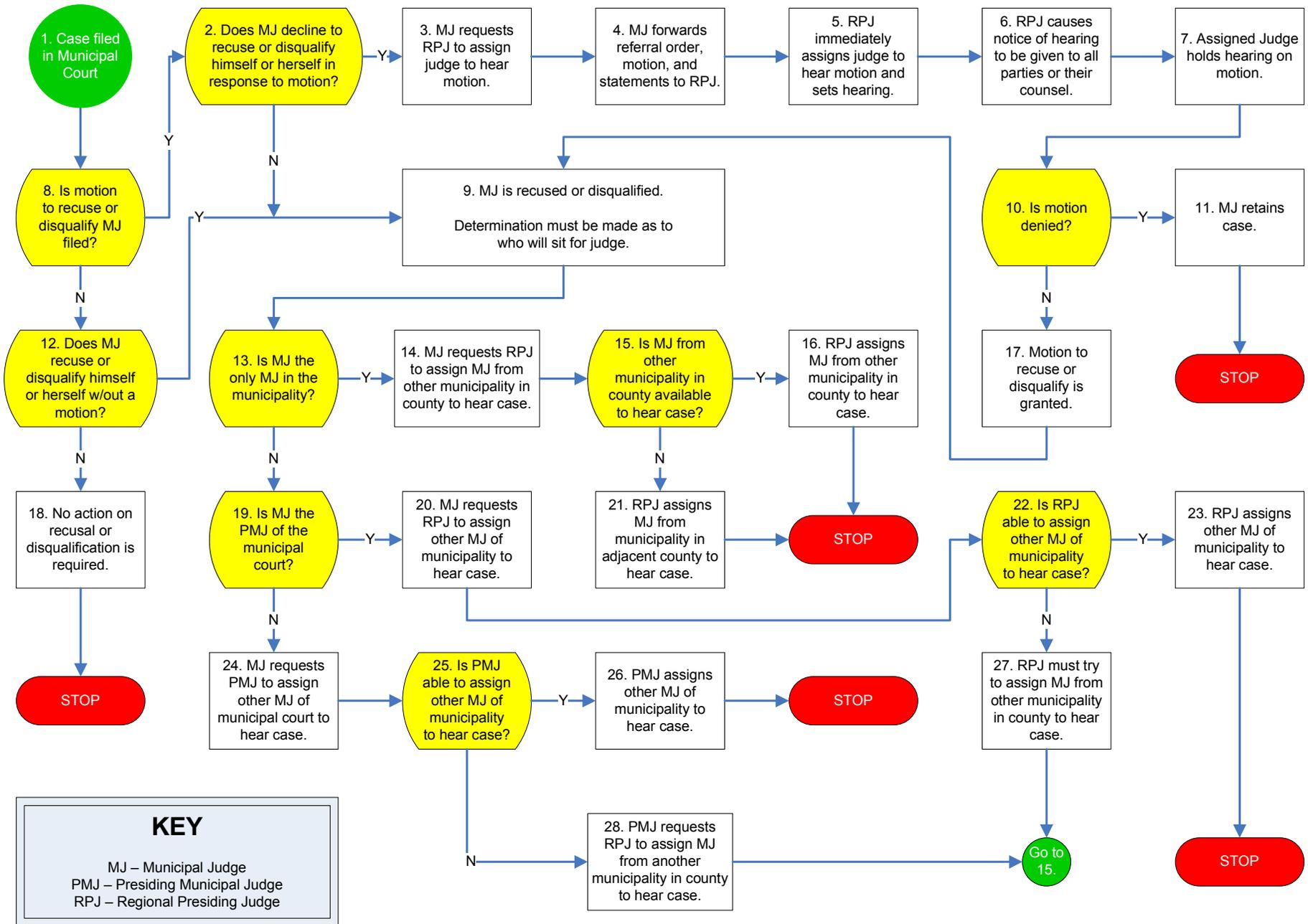


Recusal/Disqualification of Municipal Court Judges



**STEP-BY-STEP COMMENTARY
RECUSAL/DISQUALIFICATION OF
MUNICIPAL COURT JUDGES
FLOWCHART
November 2011**

DEFINITIONS:

Active Judge: A person who holds office as a district court judge or statutory county court judge. (Sec. 29.051(1), Gov't Code.)

Presiding Municipal Judge: The presiding judge of a municipal court, including a municipal court of record. (Sec. 29.051(2), Gov't Code.)

Note: Sec. 29.051(2) uses the term "presiding judge" to denote a presiding municipal judge; however, to be more precise the term "presiding municipal judge" is used in the commentary and the flowchart.

Regional Presiding Judge: A presiding judge of one of the nine administrative judicial regions of Texas appointed by the governor under Section 74.055 of the Government Code. (Sec. 29.051(3), Gov't Code). A list of the regional presiding judges and their jurisdictions is available at: <http://www.courts.state.tx.us/courts/ajr.asp>.

COMMENTARY:

Step 1. Case filed in Municipal Court

Subchapter A-1, Chapter 29, Texas Government Code, enacted by SB 480 (and HB 3474), 81st Legislature, Reg. Session, provides the procedure for the recusal and disqualification of municipal court judges in hearings or trials in municipal courts, including municipal courts of record. Advance to Step 8 to begin the analysis of the appropriate procedure for handling the recusal and disqualification of a municipal court judge in a case.

Step 2. Does Municipal Judge decline to recuse or disqualify himself or herself in response to motion.

Before further proceedings in a case in which a motion to recuse or disqualify has been filed, the Municipal Judge must determine whether recusal or disqualification is appropriate. If it is, the Municipal Judge should recuse or disqualify him/herself in the case. (Sec. 29.055(a), Gov't Code.)

If the Municipal Judge declines to recuse or disqualify him/herself, advance to Step 3. If the Municipal Judge recuses or disqualifies him/herself, go to Step 9.

Step 3. Municipal Judge requests Regional Presiding Judge to assign judge to hear motion.

If the Municipal Judge declines to recuse or disqualify him/herself, the Municipal Judge must request the Regional Presiding Judge to assign a judge to hear the motion. (Sec. 29.055(a)(2), Gov't Code.) Advance to Step 4.

Step 4. Municipal Judge forwards referral order, motion, and statements to Regional Presiding Judge.

A Municipal Judge who does not recuse or disqualify him/herself after a motion has been filed must forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the Regional Presiding Judge. The Municipal Judge may not take other action in the case during the time after the filing of the motion and before the hearing on the motion, except for good cause stated in the order in which the action is taken. (Sec. 29.055(c), Gov't Code.) Advance to Step 5.

Step 5. Regional Presiding Judge immediately assigns judge to hear motion and sets hearing.

Upon receipt of a request for the assignment of a judge to hear a motion to recuse or disqualify a Municipal Judge, the Regional Presiding Judge must immediately set a hearing before himself, an active judge, or a judge on the list of judges who are eligible to serve on assignment under Sec. 74.055, Gov't Code.* (Sec. 29.056(a)(1), Gov't Code.) Advance to Step 6.

** Judges who are on the list of judges who are eligible to serve on assignment under Sec. 74.055 are former or retired district, statutory county, or appellate court judges who have met the qualification to continue serving on assignment under Sec. 74.055, Tex. Gov't Code.*

Step 6. Regional Presiding Judge causes notice of hearing to be given to all parties or their counsel.

After setting a hearing on the motion, the Regional Presiding Judge must give notice to all parties or their counsel and make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require. (Sec. 29.056(a)(2),(3), Gov't Code.) Advance to Step 7.

Step 7. Assigned Judge holds hearing on motion.

A judge who is assigned to hear the motion must hold a hearing on the motion. The judge who is assigned to hear the motion may also hear any amended or supplemented motion for recusal or disqualification filed in the case. If none of the parties object, a hearing on the motion and any amended or supplemented motion can be conducted by telephone. (**Sec. 29.056(b), (c), Gov't Code.**) Go to Step 10.

Step 8. Is motion to recuse or disqualify Municipal Judge filed?

A party in a hearing or trial in a municipal court, including a municipal court of record, may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the Municipal Judge. The grounds may include any disability of the Municipal Judge to preside over the case. (**Sec. 29.052(a), Gov't Code.**)

A motion for recusal and disqualification of a Municipal Judge must:

1. be filed at least 10 days before the date of the hearing or trial, except that it must be filed at the earliest practicable time before the beginning of the trial or hearing if a judge is assigned to a case 10 or fewer days before the date set for trial or hearing;
2. be verified; and
3. state with particularity the alleged grounds for recusal or disqualification of the Municipal Judge based on: (1) personal knowledge that is supported by admissible evidence, or (2) specifically stated grounds for belief of the allegations.

(**Sec. 29.052(b),(c), Gov't Code.**)

If a motion to recuse or disqualify is filed in the case, go to Step 2. If a motion to recuse or disqualify is not filed in the case, go to Step 12.

Step 9. Municipal Judge is recused or disqualified. Determination must be made as to who will sit for judge.

From Step 12:

Municipal Judge disqualifies him/herself with or without a motion

The procedure for appointing a judge to sit for a Municipal Judge who is recused or disqualified is the same whether the Municipal Judge recuses or disqualifies him/herself on his/her own motion or in response to the filing of a motion to recuse or disqualify. A Municipal Judge who recuses or disqualifies him/herself with or without a motion must enter an order of recusal or disqualification and then request that another judge be assigned to sit in the case. (**Sec. 29.055(b)(1), Gov't Code.**)

Go to Step 13 to determine to which judge the request that another judge be assigned to hear the case should be sent.

From Step17:

Municipal Judge is disqualified following a hearing on a Motion to Recuse or Disqualify:

The judge who hears and grants a Motion to Recuse or Disqualify must determine who is the appropriate judge to assign a Municipal Judge to hear the case and request that that judge assign another Municipal Judge to hear the case. (Sec. 29.057, Gov't Code.)

Go to Step 13 to determine to which judge the request that another judge be assigned to hear the case should be sent.

Step 10. Is motion denied?

After a hearing on the motion, the judge who is assigned to hear the motion can either grant or deny the motion. If the motion is denied, advance to Step 11. If the motion is granted, go to Step 17.

Step 11. Municipal Judge retains case.

If after a hearing on the motion to recuse or disqualify the motion is denied, the Municipal Judge retains the case and no further action is required under Subchapter A-1, Chapter 29, Texas Government Code. **STOP.**

Step 12. Does Municipal Judge recuse or disqualify himself or herself without a motion?

A Municipal Judge may determine that recusal or disqualification is necessary in a case even if a motion to recuse or disqualify has not been filed.

If a Municipal Judge recuses or disqualifies him/herself without a motion, go to Step 9. If a Municipal Judge does not recuse or disqualify him/herself, go to Step 18.

Step 13. Is Municipal Judge the only Municipal Judge in the municipality?

If the answer to this question is "yes," then advance to Step 14. If the answer to this question is "no," then go to Step 19.

Step 14. Municipal Judge requests Regional Presiding Judge to assign Municipal Judge from other municipality in county to hear case.

If Municipal Judge disqualified him/herself with or without a motion:

If the Municipal Judge has recused or disqualified him/herself with or without a motion and is the only judge in the municipality, then the Municipal Judge must request the Regional Presiding Judge to assign a judge of another municipal court in the county to hear the case. The Municipal Judge may not take any other action in the case, except that a Municipal Judge who

recuses him/herself for good cause may take other action as stated in the order in which the action is taken. (**Secs. 29.055(b)(1)(C)** and **Sec. 29.055(b)(2), Gov't Code.**) Advance to Step 15 to determine who the Regional Presiding Judge will assign to hear the case.

If Municipal Judge is disqualified following a hearing on a Motion to Recuse or Disqualify:

If the Municipal Judge has been recused or disqualified after a hearing on a motion to recuse or disqualify him/her, then the judge who heard and ruled on the motion should request the Regional Presiding Judge to assign a judge of another municipal court in the county to hear the case. (**Sec. 29.057(a)(3), Gov't Code.**) Advance to Step 15 to determine who the Regional Presiding Judge will assign to hear the case.

Step 15. Is Municipal Judge from other municipality in county available to hear the case?

In some instances there are no other municipalities located in a county or all of the Municipal Judges in the municipalities in the county are unavailable because they have also been recused or disqualified or are otherwise unavailable. (**Sec. 29.057(c), Gov't Code.**) If the answer to this question is “yes,” advance to Step 16. If the answer to this question is “no,” go to Step 21.

Step 16. Regional Presiding Judge assigns Municipal Judge from other municipality in county to hear case.

If a Municipal Judge from another municipality in the county is available to hear the case, the Regional Presiding Judge should appoint a Municipal Judge from another municipality in the county. A Regional Presiding Judge should not look to Municipal Judges of municipalities located outside of the county if one is available in the county. (**Secs. 29.055(b)(1)(C), Gov't Code.**)

Once a Municipal Judge is assigned by the Regional Presiding Judge to hear the case, no further action is required. **STOP.**

Step 17. Motion to recuse or disqualify is granted.

If the motion to recuse or disqualify is granted, the judge who heard the motion shall enter an order of recusal or disqualification and, depending on whether the recused or disqualified Municipal Judge is the Presiding Municipal Judge of the municipality or from a municipality with more than one Municipal Judge, either request the Regional Presiding Judge or the Presiding Municipal Judge of the municipality to assign another Municipal Judge to hear the case. (**Sec. 29.057, Gov't Code.**)

Go to Step 9 to determine to whom the request to assign the Municipal Judge to hear the case should be made.

Step 18. No action on recusal or disqualification is required.

If a motion to recuse or disqualify has not been filed in the case and the Municipal Judge does not recuse or disqualify him/herself on his or her own motion, no action is required under Subchapter A-1, Chapter 29, Texas Government Code. **STOP.**

Step 19. Is Municipal Judge the Presiding Municipal Judge of the municipal court?

If the answer to this question is “yes,” then go to Step 20. If the answer to this question is “no,” then go to Step 22.

Step 20. Municipal Judge requests Regional Presiding Judge to assign other Municipal Judge of municipality to hear case.

If Municipal Judge disqualified him/herself with or without a motion:

If the Municipal Judge has recused or disqualified him/herself with or without a motion and the Municipal Judge is the Presiding Municipal Judge of the Court, then the Municipal Judge should request the Regional Presiding Judge to assign any another Municipal Judge of the municipal court to hear the case. (Sec. 29.055(b)(1)(B), Gov’t Code.) Go to Step 25.

If Municipal Judge is disqualified following a hearing on a Motion to Recuse or Disqualify:

If the Municipal Judge has been recused or disqualified after a hearing on a motion to recuse or disqualify him/her, and the recused or disqualified Municipal Judge is the Presiding Judge of the Municipal Court, then the judge who heard and ruled on the motion should request that the Regional Presiding Judge assign another Municipal Judge of the municipality to hear the case. (Sec. 29.057(a)(2), Gov’t Code.) Go to Step 25.

Step 21. Regional Presiding Judge assigns Municipal Judge from municipality in adjacent county to hear case.

If there are no other municipalities located in a county or all of the Municipal Judges in the municipalities in the county are unavailable because they have also been recused or disqualified or are otherwise unavailable, the Regional Presiding Judge shall assign a Municipal Judge from an adjacent county to hear the case. (Sec. 29.057(c), Gov’t Code.)

Once a Municipal Judge from an adjacent county is assigned by the Regional Presiding Judge to hear the case, no further action is required. **STOP.**

Step 22. Municipal Judge requests Presiding Municipal Judge to assign other Municipal Judge of municipal court to hear case?

If Municipal Judge disqualified him/herself with or without a motion:

If the Municipal Judge has recused or disqualified him/herself with or without a motion and the Municipal Judge is not the Presiding Municipal Judge of the Court, then the Municipal Judge should request the Presiding Municipal Judge to assign any another Municipal Judge of the municipal court, including the Presiding Municipal Judge, to hear the case. (Sec. 29.055(b)(1)(A), Gov't Code.) Advance to Step 23.

If Municipal Judge is disqualified following a hearing on a Motion to Recuse or Disqualify:

If the Municipal Judge has been recused or disqualified after a hearing on a motion to recuse or disqualify him/her, and the recused or disqualified Municipal Judge is not the Presiding Municipal Judge of the municipality, then the judge who heard and ruled on the motion should request that the Presiding Municipal Judge assign any other Municipal Judge of the municipality, including the Presiding Municipal Judge, to hear the case. (Sec. 29.057(a)(1), Gov't Code.) Advance to Step 23.

Step 23. Is Presiding Municipal Judge able to assign other Municipal Judge of municipality to hear case?

If the answer to this question is “yes,” then advance to Step 24. If the answer to this question is “no,” then go to Step 27.

Step 24. Presiding Municipal Judge assigns other Municipal Judge of municipality to hear case.

The Presiding Municipal Judge may assign another Municipal Judge of the municipality who is available to sit in the case, including him/herself. (Sec. 29.055(b)(1)(A), Gov't Code.)

Once the Presiding Municipal Judge has assigned a Municipal Judge to hear the case, no further action is required. **STOP.**

Step 25. Is Regional Presiding Judge able to assign other Municipal Judge of municipality to hear case?

If the answer to this question is “yes,” then advance to Step 26. If the answer to this question is “no,” then go to Step 15.

Step 26. Regional Presiding Judge assigns other Municipal Judge of municipality to hear case.

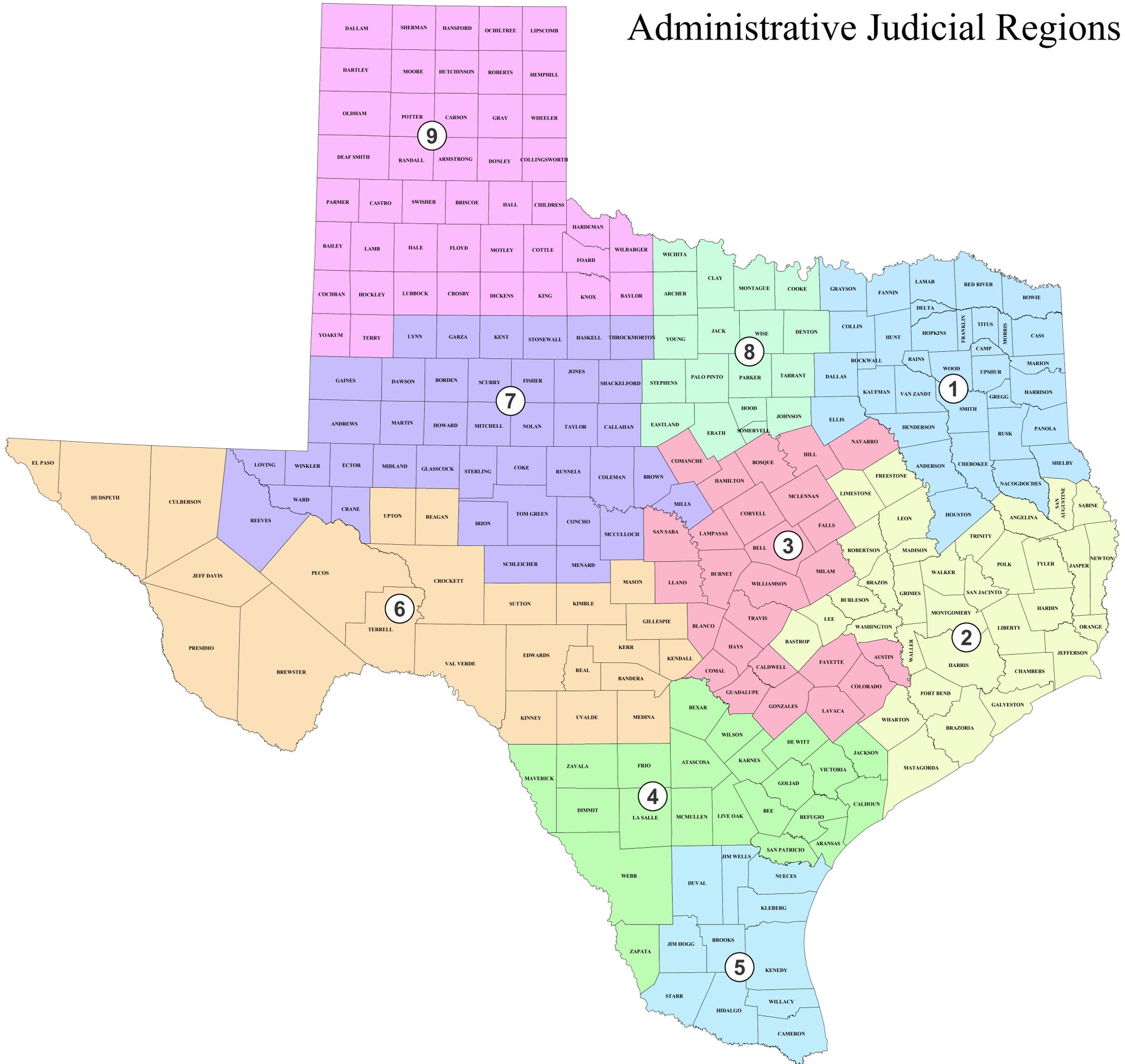
If another Municipal Judge of the municipality is available to hear the case, the Regional Presiding Judge should appoint one of the available Municipal Judges to hear the case. A Regional Presiding Judge should not look to Municipal Judges of other municipalities if one is available in the municipality of the recused or disqualified Municipal Judge. (Secs. **29.055(b)(1)(B)** and **29.057(a)(2)**, Gov't Code.)

Once a Municipal Judge is assigned by the Regional Presiding Judge to hear the case, no further action is required. **STOP.**

Step 27. Presiding Municipal Judge requests Regional Presiding Judge to assign Municipal Judge from another municipality in county to hear case.

If a Presiding Municipal Judge is unable to assign a Municipal Judge of the municipality to hear the case when a Municipal Judge is recused or disqualified under Sec. 29.055 or 29.056 because there are not any other Municipal Judges in the municipality or because all the Municipal Judges have been recused or disqualified or are otherwise unavailable to hear the case, the Presiding Municipal Judge should request the Regional Presiding Judge to assign a Municipal Judge from another municipality in the county or, if necessary, assign a Municipal Judge from a municipality in an adjacent county to hear the case. (Sec. **29.057(b)**, Gov't Code.)
Go to Step 15.

Administrative Judicial Regions



Grounds for Disqualification

Article V, Section 11, Texas Constitution. Disqualification of Judges.

No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Appeals, or any member of any of those courts shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law.

Article 30.01, Texas Code of Criminal Procedure. Causes Which Disqualify.

No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree, as determined under Chapter 573, Government Code.

Grounds for Recusal in Texas Rule of Civil Procedure 18b

Grounds for Recusal. A judge must recuse in any proceeding in which:

- (1) the judge's impartiality might reasonably be questioned;
- (2) the judge has a personal bias or prejudice concerning the subject matter or a party;
- (3) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
- (4) the judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;
- (5) the judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
- (6) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (7) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (A) is a party to the proceeding or an officer, director, or trustee of a party;
 - (B) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - (C) is to the judge's knowledge likely to be a material witness in the proceeding.
- (8) the judge or the judge's spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

MOTION FOR DISQUALIFICATION/RECUSAL OF JUDGE (Sec. 29.052, G.C.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

STATE'S MOTION FOR RECUSAL/DISQUALIFICATION

Comes now the State of Texas, by and through _____, the attorney for the State, and files this Motion for Recusal / Disqualification and moves the Honorable Judge to recuse or disqualify (himself)(herself) based on the following grounds:

- the judge is related to a party by affinity or consanguinity within the third degree, as determined under Chapter 573, Government Code
- the judge served as counsel in this case
- the judge has an interest in the outcome of this case or am an injured party in this case
- other: _____.

I.

The State alleges these grounds for recusal/disqualification based on personal knowledge that is supported by admissible evidence or based on the specifically states grounds for belief of the allegations, said grounds being: _____

II.

This motion is filed at least 10 days before the date of the scheduled hearing or trial, or at the earliest practicable time before the beginning of the trial or other hearing as the judge was assigned to this case 10 or fewer days before the scheduled hearing or trial.

III.

Wherefore, premises considered, the State prays that this Honorable Court grant said motion and that another judge be assigned to preside over this cause.

Respectfully submitted,

(Name)

(Position)

State Bar Card Number: _____

I hereby certify that a true and correct copy of this State's Motion for Recusal/Disqualification was delivered to (the Defendant) (Counsel for the Defendant), on this the _____ day of _____, 20____.

(Name)

(Position)

State Bar Card Number: _____

ORDER OF RECUSAL OR DISQUALIFICATION (Sec. 29.055(b), G.C.)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

ORDER OF (RECUSAL)(DISQUALIFICATION)

Comes now _____, Judge of the _____ Municipal Court, and finds that (on the court’s own motion) (on motion of the Defendant) (on motion of the State) that:

Disqualification is appropriate in this cause for the reason that:

- I am related to a party by affinity or consanguinity within the third degree, as determined under Chapter 573, Government Code.
- I served as counsel in this case.
- I have an interest in the outcome of this case or am an injured party in this case.

OR

Recusal is appropriate in this cause based on the following ground(s): _____
_____.

It is hereby ORDERED:

If the judge is not the presiding judge of the Municipal Court:

Pursuant to Section 29.055(b)(1)(A), Government Code, I request the Honorable _____, Presiding Judge of the Municipal Court of _____, to assign another judge to hear this cause.

OR

If the judge is the presiding judge of the Municipal Court or if the judge is the only municipal judge in the municipality:

Pursuant to Section 29.055(b)(1)(B)-(C), Government Code, I request the Honorable _____, Presiding Judge of the _____ Administrative Judicial Region, to assign another judge to hear this cause.

SIGNED this _____ day of _____, 20_____.

 Judge, Municipal Court
 City of _____

ORDER OF REFERRAL UPON MOTION FOR RECUSAL OR DISQUALIFICATION (Sec. 29.055(c), G.C.)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

ORDER OF REFERRAL TO HEAR MOTION FOR (RECUSAL) (DISQUALIFICATION)

Pursuant to Section 29.055(c), Government Code, the undersigned Judge hereby refers the attached Motion to Recuse or Disqualify filed in the above-numbered cause to the Honorable _____, Presiding Judge of the _____ Administrative Judicial Region, for assignment of a judge to hear the motion under Section 29.056, Government Code.

SIGNED this _____ day of _____, 20_____.

Judge, Municipal Court
City of _____

SAMPLE LETTER from Presiding Municipal Judge to Regional Presiding Judge requesting the assignment of a municipal judge from another municipality to hear a case because all of the municipal judges in the municipality are recused, disqualified, or are otherwise unavailable to hear the case (Sec. 29.057(b), G.C.)

[Date]

The Honorable _____
Presiding Judge, _____ Administrative Judicial Region
[Street Address]
[City, State Zip]

Re: Request for Assignment of Municipal Court Judge to Hear Case Pursuant to Texas Government Code Section 29.057(b)

Court:
Cause No.:
Case Name:

Dear Judge _____:

[Pursuant to Government Code Sec. 29.055(b)(1)(A), I have received a request to assign a municipal court judge of this court to hear the above-referenced case because the judge in the case has recused or disqualified him/herself.]

OR

[Pursuant to Government Code Sec. 29.057(a)(1), I have received a request to assign a municipal court judge of this court to hear the above-referenced case because the judge has been recused or disqualified after a hearing on a motion.]

I find that I am unable to assign a judge of this court to hear the above-referenced case because all of the judges of this court are either recused or disqualified or are otherwise unavailable to hear the case. Therefore, pursuant to Government Code Section 29.057(b), I request that you assign a municipal judge from another municipality in the county to hear the above-referenced case, or, if necessary, a municipal judge from a municipality in an adjacent county.

Sincerely,

[Name]
Presiding Judge
Municipal Court
City of _____