

CHAPTER 851

S.B. No. 1321

An Act relating to court procedures and alternative methods of resolving citizen disputes; amending Chapter 719, Acts of the 66th Legislature, Regular Session, 1979, and amending Chapter 26, Acts of the 68th Legislature, Regular Session, 1983, by amending Section 1 and adding Section 1A (Articles 1918a and 2372aa, Vernon's Texas Civil Statutes); amending Subsections (a) and (b), Section 11.10, Family Code, as amended; and repealing Chapter 638, Acts of the 64th

Legislature, Regular Session, 1975; Chapter 471, Acts of the 65th Legislature, Regular Session, 1977; and Chapter 679, Acts of the 68th Legislature, Regular Session, 1983 (Articles 2338-9b.2, 2338-1d, and 1918d, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 719, Acts of the 66th Legislature, Regular Session, 1979 (Article 1918b, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. **APPOINTMENT OF MASTER.** (a) The judge of a district court [~~;~~ ~~court of domestic relations;~~] or other court having jurisdiction of suits [~~affecting the parent-child relationship~~] under Title 1, 2, or 4, Family Code, as amended, may appoint a master to perform the duties authorized by this Act if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a master. *The court may employ either a full or part-time master.* Except as provided by Subsection (d) of this section, the master shall be appointed by the judge and serves at the will of the judge.

"(b) If the court exercises jurisdiction in more than one county, the master may serve only in a county in which the commissioners court has authorized the master's appointment.

"(c) If more than one district court [~~;~~ ~~court of domestic relations;~~] or other court having jurisdiction of suits *under Title 1, 2, or 4, Family Code, as amended* [~~affecting the parent-child relationship~~] has jurisdiction in a county, the commissioners court may authorize the appointment of a master for each court or may authorize one or more masters to share service with two or more courts.

"(d) If a master serves more than one court, the master's appointment must be made with the unanimous approval of all the judges under whom the master serves, and the master's services may be terminated by a majority vote of all the judges for whom the master serves.

"Section 2. **QUALIFICATIONS OF MASTER.** To be eligible for appointment as a master under this Act, a person must *meet all of the requirements and qualifications to serve as a district judge* [~~be a resident of Texas and must be licensed to practice law in this state~~].

"Section 3. **COMPENSATION OF MASTER.** The master is entitled to a salary as determined by the commissioners court of the county in which he or she serves. If the master serves in more than one county, the master's salary shall be determined by agreement of the commissioners courts of the counties. The salary shall be paid from the county fund available for payment of officers' salaries.

"Section 4. **REFERRAL OF CASES TO MASTER.** (a) The judge of a court having a master appointed as provided in this Act may refer to the master any *aspect of a civil case involving a matter over which the court has jurisdiction under Title 1, 2, or 4, Family Code, as amended, including but not limited to the following, and, after notice to all parties of the time and place of hearing, the master may preside over any hearing enumerated below:*

"(1) *a hearing for a temporary order in all actions or suits for support by one spouse against another;*

"(2) *a motion or suit to modify a temporary or final order;*

"(3) *a suit affecting the parent-child relationship involving temporary orders;*

"(4) *an application for a temporary injunction involving temporary possession or use of property;*

"(5) *a habeas corpus proceeding, including any necessary hearing authorized by the Family Code;*

"(6) *a motion to transfer;*

"(7) *a motion for contempt for failure or refusal to obey a temporary or final order;*

"(8) *an action brought under Chapter 21, Family Code;*

"(9) *an action for the protection of the family;*

"(10) *a matter on which the parties agree;*

"(11) *a matter in which a party is entitled to a default judgment; and*

"(12) *any other matter referred by the judge that is in the jurisdiction of the court, including but not limited to pretrial motions, discovery, summary judgments, and other matters governed by the Texas Rules of Civil Procedure.*

"(b) *The judge of a court having appointed a master as provided in this Act may also refer to the master a trial on the merits over which the master may preside unless one or more parties files a written objection to the master hearing same, in which event, such trial on the merits shall be heard by the court. Should neither party file a written objection to a referral to the master for hearing on the merits, there shall be no right of appeal to the referring court and the judgment of the master shall become final for purposes of appeal to the court of appeals or to the Supreme Court of Texas. All times for appeal shall be computed in accordance with Subsection (a) of Section 10 of this Act.*

“(c) *The court may not, however, refer a proceeding to a master appointed pursuant to this Act, where the termination of parental rights is sought, or a proceeding in which any party seeks to appoint a receiver. Should such matters be referred to a master, the master shall not conduct a hearing on same and any order issued by a master on such matters shall be void.*

“(d) *Upon appointment of a master to a district court or courts, any pending and future cases under Title 1, 2, or 4, Family Code, as amended, may be referred to the master, except as the judge may limit. [motions:*

“(1) ~~for contempt for the failure or refusal to pay child support, temporary support, or separate maintenance or for failure or refusal to comply with court orders concerning the possession of or access to children who have been the subjects of suits affecting the parent/child relationship; or~~

“(2) ~~to modify the decree in a suit affecting the parent/child relationship providing for the support, conservatorship, or possession of or access to a child.~~

“(b) ~~To refer a case to a master, the judge shall issue an order of referral specifying the duties of the master].~~

“Section 5. ~~DUTIES [POWERS] OF MASTER. [(a) Except as provided by Subsection (c) (b) of Section 4 of this Act (this section), a master to whom a case is referred may:~~

“(1) conduct hearings;

“(2) hear evidence;

“(3) compel the production of relevant evidence;

“(4) rule on the admissibility of evidence;

“(5) issue summons for the appearance of witnesses;

“(6) examine witnesses;

“(7) swear witnesses for the hearing;

“(8) make findings of fact on the evidence;

“(9) formulate conclusions of law;

“(10) recommend the judgment to be made in the case;

“(11) regulate all proceedings in a hearing before the master; and

“(12) do all acts and take all measures necessary and proper for the efficient performance of the master ~~[duties required in the order of referral].~~

“(b) ~~The order of referral may limit the powers of the master and direct the master to report only on specific issues; do particular acts; or receive and report on evidence only. The order may set the time and place for the hearing; prescribe a closing date for the hearing; and provide for a date for the filing of the master's report.]~~

“Section 6. ~~PARTIES AND WITNESSES APPEARING BEFORE MASTER. (a) A party or a witness appearing before the master is subject to the penalties of perjury if the party or witness is duly sworn.~~

“(b) ~~If a party or a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of the refusal to the referring court, the master may recommend to the court to [may] issue attachment against the party or witness and the master may recommend to [may] fine or imprison the witness.~~

“(c) ~~Except as otherwise provided in this Act, a master may take testimony in a case over which the District Court has jurisdiction and may recommend that the judge enter a final judgment or interlocutory order.~~

“Section 7. ~~REPORT [FINDINGS]; NOTICE. On the conclusion of the hearing in each case, the master shall transmit to the referring judge all papers relating to the case, together with his report [the findings] and a statement that notice of the report [findings] and of the right to a hearing before the judge has been given to all parties [adult principals, minors, or parents, guardians, or custodians of any minor whose case has been heard by the master]. This notice may be given at the hearing or otherwise as the referring court directs.~~

“Section 8. ~~ACTION ON MASTER'S REPORT. After the master's report is filed, and unless the parties have filed a written notice of appeal, the referring court may adopt approve, modify, correct, reject, or reverse the master's report or recommit it for further information, as the court may deem proper and necessary in the particular circumstances of the case. If judgment has been recommended, the court in its discretion may approve the recommendation and hear further evidence before rendition of judgment.~~

“Section 9. ~~HEARING. Adult principals, parties, or a minor child or his parents, guardians, or custodians are entitled to a hearing by the judge of the referring court if within three days as defined by Rule 4 of the Texas Rules of Civil Procedure after the report [receiving notice of the findings] of the master is signed by the master, they file a request with the court for a hearing. [The referring court may allow the hearing at any time.]~~

"Section 10. **APPEAL [DEGREE UPON ADOPTION BY COURT]**. (a) *The first day of the appeal time shall commence on the day after the master signs the report. All notices of appeal shall be in writing, specifying that portion of the master's ruling which is being appealed, and notice shall be given to opposing counsel.*

"(b) *The referring court, after notice to the parties, shall hold the hearing not later than the 30th day after the date on which the request was filed. The request shall state specifically the findings and conclusions of the master that are objected to, and the hearing shall be limited to those findings and conclusions. The parties may present witnesses as in a hearing de novo on the issues in controversy. Failure to appeal a master's report which disposes of all issues, or which is a final judgment, or where such judgment is appealable without being a final judgment shall not deprive any litigant from appealing directly to the proper court of appeals and to the Supreme Court of Texas. The date of the signing of a judgment shall be the controlling date for the purposes of appeal. [If no hearing before the judge of the referring court is requested or the right to such hearing is waived, the findings and recommendations of the master become the decree of the court when adopted by an order of the judge.]*

"Section 11. **EFFECT OF MASTER'S REPORT PENDING APPEAL [NOTICE OF TIME AND PLACE OF HEARING]**. *Until the review of the master's report by the referring court, the decisions and recommendations of the master are in full force and effect and are enforceable as an order of the court, except for orders providing for incarceration. [Prior to the hearing by the master, the parties litigant shall be given due notice as provided by law of the time and place of the hearing.]*

"Section 12. **INAPPLICABILITY OF THIS ACT TO MASTERS APPOINTED PURSUANT TO RULE 171, TEXAS RULES OF CIVIL PROCEDURE**. *Masters appointed by the court pursuant to Rule 171 of the Texas Rules of Civil Procedure shall have all the duties and powers set forth in the order of appointment and shall not be governed by the terms of this Act.*

"Section 13. **JURY TRIAL**. *In a proceeding in which a jury trial has been demanded, the master shall refer the case back to the referring court for a full hearing before the court and jury, subject to the usual rules of the court in such cases.*

"Section 14. **IMMUNITY**. *A master appointed under Section 1 of this Act has the judicial immunity of a district judge. All existing immunity granted masters by law, express or implied, shall continue until this Act becomes effective.*

"Section 15. **ATTENDANCE OF BAILIFF**. *A bailiff may attend a hearing held by a master if directed by the referring judge.*

"Section 16. **COURT REPORTER**. *A court reporter is not required during a hearing held by a master. A party, the master, or the referring judge may provide for a reporter during the hearing. The record may be preserved by any other means approved by the master. The judge or master may tax the expense of the court reporter as costs.*

"Section 17. **REAPPOINTMENT OF MASTERS**. *Upon the date this Act becomes operative, all masters appointed under any statute or act repealed by this Act are hereby reappointed as masters in their respective positions for the court they serve."*

SECTION 2. Subsections (a) and (b), Section 11.10, Family Code, as amended, are amended to read as follows:

"(a) In any suit in which termination of the parent-child relationship is sought, the court or a master shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner or unless an attorney ad litem has been appointed for the child or unless the court or a master finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party. In any other suit under this subtitle, the court or a master may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

"If the judge or master of the court determines that the parties or litigants are able to defray the costs of the ad litem's compensation as determined by the reasonable and customary fees for similar services in such county of jurisdiction, such costs may be ordered paid by either or both parties, or the judge or master may order either or both parties, prior to final hearing, to pay said sums into the registry of the court or into an account authorized by the court, for the use and benefit of the ad litem upon order of the court.

"(b) (1) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

"(2) A master may recommend the appointment of an attorney for any party in a case in which it deems representation necessary to protect the interests of the child who is the subject matter of the suit and such may be taxed as costs to be assessed against one or more of the parties."

SECTION 3. INVALIDITY OF ANY PROVISION. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and the provisions of the Act are declared to be severable.

SECTION 4. REPEALER. This Act repeals Chapter 638, Acts of the 64th Legislature, Regular Session, 1975; Chapter 471, Acts of the 65th Legislature, Regular Session, 1977; and Chapter 679, Acts of the 68th Legislature, Regular Session, 1983 (Articles 2338-9b.2, 2338-1d, and 1918d, Vernon's Texas Civil Statutes), except that (1) any matter referred by the judge for whom the master sits under Chapter 719, Acts of the 66th Legislature, Regular Session (Article 1918b, Vernon's Texas Civil Statutes), or any of the above repealed articles in which such trial or hearing has started prior to the effective date of this Act shall be concluded under the terms, rules, and regulations of the repealed acts; (2) all reports, recommendations, and rulings made under any repealed act which are final as to any previous hearing are valid and unaffected, whether or not actually signed by the judge for whom the master sits.

SECTION 5. Section 1, Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. **POWER TO ESTABLISH SYSTEM.** (a) The commissioners court of a county by order may establish an alternative system for the peaceable and expeditious resolution of citizen disputes [~~that do not require formal court action~~].

"(b) *An alternative dispute resolution system is an informal forum focusing on mediating, conciliating, or arbitrating disputes among individuals, including but not limited to those having an ongoing relationship such as relatives, neighbors, landlords and tenants, employees and employers, and merchants and consumers.*"

SECTION 6. Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes), is amended by adding Section 1A to read as follows:

"Section 1A. **REFERRAL OF CASES.** *A judge of a district court, county court, statutory county court, probate court, or justice of the peace court in a county in which an alternative dispute resolution system has been established may, on motion of a party, refer a case to the system. Referral under this section does not prejudice the case.*"

SECTION 7. Section 3, Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. **GENERAL POWERS.** The commissioners court is granted all necessary power to make the alternative dispute resolution system effective, including the power to contract with any private nonprofit corporation, *political subdivision*, public corporation, or combination thereof for the purpose of administering the system and to make all reasonable rules in regard to the system in order to effectuate this Act. The commissioners court may vest the management of such alternative dispute resolution system in a committee selected by the Bar Association of such county, but the acts of such committee shall be subjected to the approval of the commissioners court."

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 25, 1985, by the following vote: Yeas 30, Nays 0; Senate concurred in House amendment on May 27, 1985, by a viva-voce vote; passed the House, with amendment, on May 25, 1985, by a non-record vote.

Approved: June 15, 1985

Effective: August 26, 1985