

By: Gallego

H.B. No. 461

Substitute the following for H.B. No. 461:

By: Hughes

C.S.H.B. No. 461

A BILL TO BE ENTITLED

AN ACT

relating to the assignment of certain retired or former judges as visiting judges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.003, Government Code, is amended by amending Subsection (b) and adding Subsections (f) and (g) to read as follows:

(b) The chief justice of the supreme court may assign a qualified retired justice or judge of the supreme court, of the court of criminal appeals, or of a court of appeals to a court of appeals for active service regardless of whether a vacancy exists in the court to which the justice is assigned. To be eligible for assignment under this subsection, a retired justice or judge must:

(1) have served as an active justice or judge for at least 96 months in a district, statutory probate, statutory county, or appellate court, with at least 48 of those months in an appellate court;

(2) not have been removed from office;

(3) certify under oath to the chief justice of the supreme court, on a form prescribed by the chief justice, that:

(A) the justice or judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the justice or judge:

1 (i) did not resign or retire from office
2 after the State Commission on Judicial Conduct notified the justice
3 or judge of the commencement of a full investigation into an
4 allegation or appearance of misconduct or disability of the justice
5 or judge as provided in Section 33.022 and before the final
6 disposition of that investigation; or

7 (ii) if the justice or judge did resign from
8 office under circumstances described by Subparagraph (i), the
9 justice or judge was not publicly reprimanded or censured as a
10 result of the investigation;

11 (4) annually demonstrate that the justice or judge has
12 completed in the past state fiscal year the educational
13 requirements for active appellate court justices or judges; and

14 (5) certify to the chief justice of the supreme court a
15 willingness not to appear and plead as an attorney in any court in
16 this state for a period of two years.

17 (f) For the purposes of Subsection (b)(1), a month of
18 service is calculated as a calendar month or a portion of a calendar
19 month in which a justice or judge was authorized by election or
20 appointment to preside.

21 (g) Subsection (b)(1) does not apply to a retired justice of
22 the supreme court.

23 SECTION 2. Section 74.041, Government Code, is amended by
24 adding Subdivisions (4)-(7) to read as follows:

25 (4) "Active judge" means a person who is a current
26 judicial officeholder.

27 (5) "Former judge" means a person who has served as an

1 active judge in a district, statutory probate, statutory county, or
2 appellate court, but who is not a retired judge.

3 (6) "Retired judge" means:

4 (A) a retiree; or

5 (B) a person who served as an active judge for at
6 least 96 months in a statutory probate or statutory county court and
7 has retired under the Texas County and District Retirement System.

8 (7) "Senior judge" means a retiree who has elected to
9 be a judicial officer under Section 75.001.

10 SECTION 3. Section 74.053, Government Code, is amended to
11 read as follows:

12 Sec. 74.053. OBJECTION TO [~~ASSIGNED~~] JUDGE ASSIGNED TO A
13 TRIAL COURT. (a) When a judge is assigned to a trial court under
14 this chapter:

15 (1) the order of assignment must state whether the
16 judge is an active, former, retired, or senior judge; and

17 (2) the presiding judge shall, if it is reasonable and
18 practicable and if time permits, give notice of the assignment to
19 each attorney representing a party to the case that is to be heard
20 in whole or part by the assigned judge.

21 (b) If a party to a civil case files a timely objection to
22 the assignment, the judge shall not hear the case. Except as
23 provided by Subsection (d), each party to the case is only entitled
24 to one objection under this section for that case.

25 (c) An objection under this section must be filed not later
26 than the seventh day after the date the party receives actual notice
27 of the assignment or before the date the first hearing or trial,

1 including pretrial hearings, commences, whichever date occurs
2 earlier. The presiding judge may extend the time to file an
3 objection under this section on written motion by a party who
4 demonstrates good cause [~~over which the assigned judge is to~~
5 ~~preside~~].

6 (d) An assigned [~~A former~~] judge or justice who was defeated
7 in the last primary or general election for which the judge or
8 justice was a candidate for the judicial office held by the judge or
9 justice [~~not a retired judge~~] may not sit in a case if either party
10 objects to the judge or justice.

11 (e) An active judge assigned under this chapter is not
12 subject to an objection.

13 (f) For purposes of this section, notice of an assignment
14 may be given and an objection to an assignment may be filed by
15 electronic mail.

16 (g) In this section, "party" includes multiple parties
17 aligned in a case as determined by the presiding judge.

18 SECTION 4. Sections 74.054(a) and (b), Government Code, are
19 amended to read as follows:

20 (a) Except as provided by Subsections (b) and (c), the
21 following judges may be assigned as provided by this chapter by the
22 presiding judge of the administrative region in which the assigned
23 judge resides:

24 (1) an active [~~a regular~~] district, constitutional
25 county, or statutory county court judge in this state;

26 (2) a senior judge [~~a district or appellate judge who~~
27 ~~is a retiree under Subtitle D or E of Title 8,~~] who has consented to

1 be subject to assignment~~[7]~~ and who is on the list maintained by the
2 presiding judge under this chapter;

3 (3) a former district or appellate judge, retired or
4 former statutory probate court judge, or retired or former
5 statutory county court judge who certifies to the presiding judge a
6 willingness to serve and who is on the list maintained by the
7 presiding judge as required by this chapter;

8 (4) a retiree or a former judge whose last judicial
9 office before retirement was justice or judge of the supreme court,
10 the court of criminal appeals, or a court of appeals and who has
11 been assigned by the chief justice to the administrative judicial
12 region in which the retiree or former judge resides for
13 reassignment by the presiding judge of that region to a district or
14 statutory county court in the region; and

15 (5) an active judge or justice of the supreme court,
16 the court of criminal appeals, or a court of appeals who has had
17 trial court experience.

18 (b) An active [~~A regular~~] statutory county court judge may
19 not be assigned to hear a matter pending in a district court outside
20 the county of the judge's residence.

21 SECTION 5. Section 74.055, Government Code, is amended by
22 amending Subsections (c) and (e) and adding Subsections (f) and (g)
23 to read as follows:

24 (c) To be eligible to be named on the list, a retired or
25 former judge must:

26 (1) have served as an active [~~a~~] judge for at least 96
27 [~~48~~] months in a district, statutory probate, statutory county, or

1 appellate court;

2 (2) have developed substantial experience in the
3 judge's area of specialty;

4 (3) not have been removed from office;

5 (4) certify under oath to the presiding judge, on a
6 form prescribed by the state board of regional judges, that:

7 (A) the judge has never been publicly reprimanded
8 or censured by the State Commission on Judicial Conduct; and

9 (B) the judge:

10 (i) did not resign or retire from office
11 after [having received notice that formal proceedings by] the State
12 Commission on Judicial Conduct notified the judge of the
13 commencement of a full investigation into an allegation or
14 appearance of misconduct or disability of the judge [had been
15 instituted] as provided in Section 33.022 and before the final
16 disposition of that investigation; or

17 (ii) if the judge did resign from office
18 under circumstances described by Subparagraph (i), was not publicly
19 reprimanded or censured as a result of the investigation [the
20 proceedings];

21 (5) annually demonstrate that the judge has completed
22 in the past state fiscal [~~calendar~~] year the educational
23 requirements for active district, statutory probate, and statutory
24 county court judges; and

25 (6) certify to the presiding judge a willingness not
26 to appear and plead as an attorney in any court in this state for a
27 period of two years.

1 (e) For purposes of Subsection (c)(1), a month of service is
2 calculated as a calendar month or a portion of a calendar month in
3 which a judge was authorized by election or appointment [~~by the~~
4 ~~governor~~] to preside.

5 (f) A former or retired judge is ineligible to be named on
6 the list if the former or retired judge is identified in a public
7 statement issued by the State Commission on Judicial Conduct as
8 having resigned or retired from office in lieu of discipline.

9 (g) A former or retired judge named on the list shall
10 immediately notify the presiding judge of a full investigation by
11 the State Commission on Judicial Conduct into an allegation or
12 appearance of misconduct or disability by the judge. A judge who
13 does not notify the presiding judge of an investigation as required
14 by this subsection is ineligible to remain on the list.

15 SECTION 6. Section 75.551, Government Code, is amended to
16 read as follows:

17 Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN
18 APPELLATE COURT. (a) When a judge or justice is assigned to an
19 appellate court under this chapter or Chapter 74:

20 (1) the order of assignment must state whether the
21 judge or justice is an active, former, retired, or senior judge or
22 justice; and

23 (2) [7] the person who assigns the judge or justice
24 shall, if it is reasonable and practicable and if time permits, give
25 notice of the assignment to each attorney representing a party to
26 the case that is to be heard in whole or part by the assigned judge
27 or justice.

1 (b) A judge or justice assigned to an appellate court may
2 not hear a civil case if a party to the case files a timely objection
3 to the assignment of the judge or justice. Except as provided by
4 Subsection (d), +

5 [~~(1)~~] each party to the case is entitled to only one
6 objection under this section for that case in the appellate court +
7 ~~and~~

8 [~~(2)~~ a party to an appeal may not in the same case
9 object in an appellate court to the assignment of a judge or justice
10 under Section 74.053(b) and under this subsection].

11 (c) An objection under this section must be filed not later
12 than the seventh day after the date the party receives actual notice
13 of the assignment or before the date the case is submitted to the
14 court, whichever date occurs earlier. The court may extend the time
15 to file an objection under this section on a showing of good cause
16 [first hearing in which the assigned judge or justice is assigned to
17 sit].

18 (d) A [~~former~~] judge or justice who was defeated in the last
19 primary or general election for which the judge or justice was a
20 candidate for the judicial office held by the judge or justice [not
21 a retired judge or justice] may not sit in an appellate case if
22 either party objects to the judge or justice.

23 (e) An active judge assigned under this chapter is not
24 subject to an objection.

25 (f) For purposes of this section, notice of an assignment
26 may be given and an objection to an assignment may be filed by
27 electronic mail.

1 (g) In this section, "party" includes multiple parties
2 aligned in a case as determined by the appellate court.

3 SECTION 7. Section 74.055(d), Government Code, is repealed.

4 SECTION 8. (a) The change in law made by Sections 3 and 6
5 of this Act applies only to a case that is pending or commences on or
6 after the effective date of this Act.

7 (b) Except as provided by Subsection (c) of this section,
8 the change in law made by Sections 1, 4, 5, and 7 of this Act applies
9 only to the assignment of a judge or justice under Chapter 74 or 75,
10 Government Code, made on or after the effective date of this Act.
11 An assignment made before the effective date of this Act is governed
12 by the law in effect at the time the assignment is made, and that law
13 is continued in effect for that purpose.

14 (c) The change in law made by Sections 1, 4, 5, and 7 of this
15 Act does not apply to a person who immediately before the effective
16 date of this Act meets the eligibility requirements to be assigned
17 by the chief justice of the supreme court under Section 74.003(b) or
18 Chapter 75, Government Code, or to be named on a list of retired and
19 former judges under Section 74.055(c), Government Code, other than
20 the certification requirement under Section 74.055(c)(6),
21 Government Code, and the former law is continued in effect for
22 determining that person's eligibility for those purposes.

23 SECTION 9. This Act takes effect September 1, 2003.