

1-1 By: Gallego (Senate Sponsor - Duncan) H.B. No. 461  
1-2 (In the Senate - Received from the House May 19, 2003;  
1-3 May 20, 2003, read first time and referred to Committee on  
1-4 Jurisprudence; May 24, 2003, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 24, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the assignment of certain retired or former judges as  
1-9 visiting judges.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 74.003, Government Code, is amended by  
1-12 amending Subsection (b) and adding Subsections (f) and (g) to read  
1-13 as follows:

1-14 (b) The chief justice of the supreme court may assign a  
1-15 qualified retired justice or judge of the supreme court, of the  
1-16 court of criminal appeals, or of a court of appeals to a court of  
1-17 appeals for active service regardless of whether a vacancy exists  
1-18 in the court to which the justice is assigned. To be eligible for  
1-19 assignment under this subsection, a retired justice or judge must:

1-20 (1) have served as an active justice or judge for at  
1-21 least 96 months in a district, statutory probate, statutory county,  
1-22 or appellate court, with at least 48 of those months in an appellate  
1-23 court;

1-24 (2) not have been removed from office;

1-25 (3) certify under oath to the chief justice of the  
1-26 supreme court, on a form prescribed by the chief justice, that:

1-27 (A) the justice or judge has never been publicly  
1-28 reprimanded or censured by the State Commission on Judicial  
1-29 Conduct; and

1-30 (B) the justice or judge:

1-31 (i) did not resign or retire from office  
1-32 after the State Commission on Judicial Conduct notified the justice  
1-33 or judge of the commencement of a full investigation into an  
1-34 allegation or appearance of misconduct or disability of the justice  
1-35 or judge as provided in Section 33.022 and before the final  
1-36 disposition of that investigation; or

1-37 (ii) if the justice or judge did resign from  
1-38 office under circumstances described by Subparagraph (i), the  
1-39 justice or judge was not publicly reprimanded or censured as a  
1-40 result of the investigation;

1-41 (4) annually demonstrate that the justice or judge has  
1-42 completed in the past state fiscal year the educational  
1-43 requirements for active appellate court justices or judges; and

1-44 (5) certify to the chief justice of the supreme court a  
1-45 willingness not to appear and plead as an attorney in any court in  
1-46 this state for a period of two years.

1-47 (f) For the purposes of Subsection (b)(1), a month of  
1-48 service is calculated as a calendar month or a portion of a calendar  
1-49 month in which a justice or judge was authorized by election or  
1-50 appointment to preside.

1-51 (g) Subsection (b)(1) does not apply to a retired justice of  
1-52 the supreme court.

1-53 SECTION 2. Section 74.041, Government Code, is amended by  
1-54 adding Subdivisions (4)-(7) to read as follows:

1-55 (4) "Active judge" means a person who is a current  
1-56 judicial officeholder.

1-57 (5) "Former judge" means a person who has served as an  
1-58 active judge in a district, statutory probate, statutory county, or  
1-59 appellate court, but who is not a retired judge.

1-60 (6) "Retired judge" means:

1-61 (A) a retiree; or

1-62 (B) a person who served as an active judge for at  
1-63 least 96 months in a statutory probate or statutory county court and  
1-64 has retired under the Texas County and District Retirement System.

2-1 (7) "Senior judge" means a retiree who has elected to  
 2-2 be a judicial officer under Section 75.001.

2-3 SECTION 3. Section 74.053, Government Code, is amended to  
 2-4 read as follows:

2-5 Sec. 74.053. OBJECTION TO ~~[ASSIGNED]~~ JUDGE ASSIGNED TO A  
 2-6 TRIAL COURT. (a) When a judge is assigned to a trial court under  
 2-7 this chapter:

2-8 (1) the order of assignment must state whether the  
 2-9 judge is an active, former, retired, or senior judge; and

2-10 (2) the presiding judge shall, if it is reasonable and  
 2-11 practicable and if time permits, give notice of the assignment to  
 2-12 each attorney representing a party to the case that is to be heard  
 2-13 in whole or part by the assigned judge.

2-14 (b) If a party to a civil case files a timely objection to  
 2-15 the assignment, the judge shall not hear the case. Except as  
 2-16 provided by Subsection (d), each party to the case is only entitled  
 2-17 to one objection under this section for that case.

2-18 (c) An objection under this section must be filed not later  
 2-19 than the seventh day after the date the party receives actual notice  
 2-20 of the assignment or before the date the first hearing or trial,  
 2-21 including pretrial hearings, commences, whichever date occurs  
 2-22 earlier. The presiding judge may extend the time to file an  
 2-23 objection under this section on written motion by a party who  
 2-24 demonstrates good cause ~~[over which the assigned judge is to~~  
 2-25 ~~preside].~~

2-26 (d) An assigned ~~[A former]~~ judge or justice who was defeated  
 2-27 in the last primary or general election for which the judge or  
 2-28 justice was a candidate for the judicial office held by the judge or  
 2-29 justice ~~[not a retired judge]~~ may not sit in a case if either party  
 2-30 objects to the judge or justice.

2-31 (e) An active judge assigned under this chapter is not  
 2-32 subject to an objection.

2-33 (f) For purposes of this section, notice of an assignment  
 2-34 may be given and an objection to an assignment may be filed by  
 2-35 electronic mail.

2-36 (g) In this section, "party" includes multiple parties  
 2-37 aligned in a case as determined by the presiding judge.

2-38 SECTION 4. Sections 74.054(a) and (b), Government Code, are  
 2-39 amended to read as follows:

2-40 (a) Except as provided by Subsections (b) and (c), the  
 2-41 following judges may be assigned as provided by this chapter by the  
 2-42 presiding judge of the administrative region in which the assigned  
 2-43 judge resides:

2-44 (1) an active ~~[a regular]~~ district, constitutional  
 2-45 county, or statutory county court judge in this state;

2-46 (2) a senior judge ~~[a district or appellate judge who~~  
 2-47 ~~is a retiree under Subtitle D or E of Title 8,]~~ who has consented to  
 2-48 be subject to assignment~~[7]~~ and who is on the list maintained by the  
 2-49 presiding judge under this chapter;

2-50 (3) a former district or appellate judge, retired or  
 2-51 former statutory probate court judge, or retired or former  
 2-52 statutory county court judge who certifies to the presiding judge a  
 2-53 willingness to serve and who is on the list maintained by the  
 2-54 presiding judge as required by this chapter;

2-55 (4) a retiree or a former judge whose last judicial  
 2-56 office before retirement was justice or judge of the supreme court,  
 2-57 the court of criminal appeals, or a court of appeals and who has  
 2-58 been assigned by the chief justice to the administrative judicial  
 2-59 region in which the retiree or former judge resides for  
 2-60 reassignment by the presiding judge of that region to a district or  
 2-61 statutory county court in the region; and

2-62 (5) an active judge or justice of the supreme court,  
 2-63 the court of criminal appeals, or a court of appeals who has had  
 2-64 trial court experience.

2-65 (b) An active ~~[A regular]~~ statutory county court judge may  
 2-66 not be assigned to hear a matter pending in a district court outside  
 2-67 the county of the judge's residence.

2-68 SECTION 5. Section 74.055, Government Code, is amended by  
 2-69 amending Subsections (c) and (e) and adding Subsections (f) and (g)

3-1 to read as follows:

3-2 (c) To be eligible to be named on the list, a retired or  
3-3 former judge must:

3-4 (1) have served as an active ~~[a]~~ judge for at least 96  
3-5 ~~[48]~~ months in a district, statutory probate, statutory county, or  
3-6 appellate court;

3-7 (2) have developed substantial experience in the  
3-8 judge's area of specialty;

3-9 (3) not have been removed from office;

3-10 (4) certify under oath to the presiding judge, on a  
3-11 form prescribed by the state board of regional judges, that:

3-12 (A) the judge has never been publicly reprimanded  
3-13 or censured by the State Commission on Judicial Conduct; and

3-14 (B) the judge:

3-15 (i) did not resign or retire from office  
3-16 after [having received notice that formal proceedings by] the State  
3-17 Commission on Judicial Conduct notified the judge of the  
3-18 commencement of a full investigation into an allegation or  
3-19 appearance of misconduct or disability of the judge [had been  
3-20 instituted] as provided in Section 33.022 and before the final  
3-21 disposition of that investigation; or

3-22 (ii) if the judge did resign from office  
3-23 under circumstances described by Subparagraph (i), was not publicly  
3-24 reprimanded or censured as a result of the investigation [the  
3-25 proceedings];

3-26 (5) annually demonstrate that the judge has completed  
3-27 in the past state fiscal ~~[calendar]~~ year the educational  
3-28 requirements for active district, statutory probate, and statutory  
3-29 county court judges; and

3-30 (6) certify to the presiding judge a willingness not  
3-31 to appear and plead as an attorney in any court in this state for a  
3-32 period of two years.

3-33 (e) For purposes of Subsection (c)(1), a month of service is  
3-34 calculated as a calendar month or a portion of a calendar month in  
3-35 which a judge was authorized by election or appointment ~~[by the~~  
3-36 ~~governor]~~ to preside.

3-37 (f) A former or retired judge is ineligible to be named on  
3-38 the list if the former or retired judge is identified in a public  
3-39 statement issued by the State Commission on Judicial Conduct as  
3-40 having resigned or retired from office in lieu of discipline.

3-41 (g) A former or retired judge named on the list shall  
3-42 immediately notify the presiding judge of a full investigation by  
3-43 the State Commission on Judicial Conduct into an allegation or  
3-44 appearance of misconduct or disability by the judge. A judge who  
3-45 does not notify the presiding judge of an investigation as required  
3-46 by this subsection is ineligible to remain on the list.

3-47 SECTION 6. Section 75.551, Government Code, is amended to  
3-48 read as follows:

3-49 Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN  
3-50 APPELLATE COURT. (a) When a judge or justice is assigned to an  
3-51 appellate court under this chapter or Chapter 74:

3-52 (1) the order of assignment must state whether the  
3-53 judge or justice is an active, former, retired, or senior judge or  
3-54 justice; and

3-55 (2) [7] the person who assigns the judge or justice  
3-56 shall, if it is reasonable and practicable and if time permits, give  
3-57 notice of the assignment to each attorney representing a party to  
3-58 the case that is to be heard in whole or part by the assigned judge  
3-59 or justice.

3-60 (b) A judge or justice assigned to an appellate court may  
3-61 not hear a civil case if a party to the case files a timely objection  
3-62 to the assignment of the judge or justice. Except as provided by  
3-63 Subsection (d), ~~[+]~~

3-64 ~~[(1)]~~ each party to the case is entitled to only one  
3-65 objection under this section for that case in the appellate court~~[+]~~  
3-66 ~~and~~

3-67 ~~[(2) a party to an appeal may not in the same case~~  
3-68 ~~object in an appellate court to the assignment of a judge or justice~~  
3-69 ~~under Section 74.053(b) and under this subsection].~~

4-1 (c) An objection under this section must be filed not later  
4-2 than the seventh day after the date the party receives actual notice  
4-3 of the assignment or before the date the case is submitted to the  
4-4 court, whichever date occurs earlier. The court may extend the time  
4-5 to file an objection under this section on a showing of good cause  
4-6 [first hearing in which the assigned judge or justice is assigned to  
4-7 sit].

4-8 (d) A [~~former~~] judge or justice who was defeated in the last  
4-9 primary or general election for which the judge or justice was a  
4-10 candidate for the judicial office held by the judge or justice [not  
4-11 a retired judge or justice] may not sit in an appellate case if  
4-12 either party objects to the judge or justice.

4-13 (e) An active judge assigned under this chapter is not  
4-14 subject to an objection.

4-15 (f) For purposes of this section, notice of an assignment  
4-16 may be given and an objection to an assignment may be filed by  
4-17 electronic mail.

4-18 (g) In this section, "party" includes multiple parties  
4-19 aligned in a case as determined by the appellate court.

4-20 SECTION 7. Section 74.055(d), Government Code, is repealed.

4-21 SECTION 8. (a) The change in law made by Sections 3 and 6  
4-22 of this Act applies only to a case that is pending or commences on or  
4-23 after the effective date of this Act.

4-24 (b) Except as provided by Subsection (c) of this section,  
4-25 the change in law made by Sections 1, 4, 5, and 7 of this Act applies  
4-26 only to the assignment of a judge or justice under Chapter 74 or 75,  
4-27 Government Code, made on or after the effective date of this Act.  
4-28 An assignment made before the effective date of this Act is governed  
4-29 by the law in effect at the time the assignment is made, and that law  
4-30 is continued in effect for that purpose.

4-31 (c) The change in law made by Sections 1, 4, 5, and 7 of this  
4-32 Act does not apply to a person who immediately before the effective  
4-33 date of this Act meets the eligibility requirements to be assigned  
4-34 by the chief justice of the supreme court under Section 74.003(b) or  
4-35 Chapter 75, Government Code, or to be named on a list of retired and  
4-36 former judges under Section 74.055(c), Government Code, other than  
4-37 the certification requirement under Section 74.055(c)(6),  
4-38 Government Code, and the former law is continued in effect for  
4-39 determining that person's eligibility for those purposes.

4-40 SECTION 9. This Act takes effect September 1, 2003.

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