

By: Duncan

S.B. No. 1107

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

14 (1) have served as an active justice or judge for at
15 least 96 months in a district, statutory probate, statutory county,
16 or appellate court, including at least 48 months in an appellate
17 court;

18 (2) not have been removed from office;

19 (3) certify under oath to the chief justice of the
20 supreme court, on a form prescribed by the chief justice, that the
21 justice or judge did not resign from office after having received
22 notice that formal proceedings by the State Commission on Judicial
23 Conduct had been instituted as provided in Section 33.022 and
24 before the final disposition of the proceedings;

1 (4) annually demonstrate that the justice or judge has
2 completed in the past calendar year the educational requirements
3 for active appellate court justices or judges; and

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

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

11 SECTION 2. Section 74.053, Government Code, is amended to
12 read as follows:

13 Sec. 74.053. OBJECTION TO ~~[ASSIGNED]~~ JUDGE ASSIGNED TO A
14 TRIAL COURT. (a) When a judge is assigned to a trial court under
15 this chapter the presiding judge shall, if it is reasonable and
16 practicable and if time permits, give notice of the assignment to
17 each attorney representing a party to the case that is to be heard
18 in whole or part by the assigned judge.

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

23 (c) An objection under this section must be filed not later
24 than the seventh day after the date that the party receives actual
25 notice of the assignment or before the date that the first hearing
26 or trial, including pretrial hearings, commences, whichever date
27 occurs earlier. The presiding judge may extend the time to file an

1 objection under this section on written motion by a party who
2 demonstrates good cause [~~over which the assigned judge is to~~
3 ~~preside~~].

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

9 (e) In this section, "party" includes multiple parties
10 aligned in a case as determined by the presiding judge.

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

14 SECTION 3. Sections 74.055(c) and (e), Government Code, are
15 amended to read as follows:

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

18 (1) have served as an active [~~a~~] judge for at least 96
19 [~~48~~] months in a district, statutory probate, statutory county, or
20 appellate court;

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

23 (3) not have been removed from office;

24 (4) certify under oath to the presiding judge, on a
25 form prescribed by the state board of regional judges, that the
26 judge did not resign from office after having received notice that
27 formal proceedings by the State Commission on Judicial Conduct had

1 been instituted as provided in Section 33.022 and before the final
2 disposition of the proceedings;

3 (5) annually demonstrate that the judge has completed
4 in the past calendar year the educational requirements for active
5 district, statutory probate, and statutory county court judges; and

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

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

13 SECTION 4. Section 75.551, Government Code, is amended by
14 amending Subsections (c) and (d) and adding Subsections (e) and (f)
15 to read as follows:

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

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

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

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

6 SECTION 5. Section 74.055(d), Government Code, is
7 repealed.

8 SECTION 6. (a) The change in law made by Sections 2 and 4
9 of this Act applies only to a case that is pending or commences on or
10 after September 1, 2003.

11 (b) Except as provided by Subsection (c) of this section,
12 the change in law made by Sections 1, 3, and 5 of this Act applies
13 only to the assignment of a judge or justice under Chapter 74 or 75,
14 Government Code, made on or after September 1, 2003. An assignment
15 made before September 1, 2003, is governed by the law in effect at
16 the time the assignment is made, and that law is continued in effect
17 for that purpose.

18 (c) The change in law made by Sections 1, 3, and 5 of this
19 Act does not apply to a person who immediately before September 1,
20 2003, meets the eligibility requirements to be assigned as a
21 visiting judge by the chief justice of the supreme court under
22 Section 74.003(b) or Chapter 75, Government Code, or to be named on
23 a list of retired and former judges under Section 74.055(c),
24 Government Code, other than the certification requirement under
25 Section 74.055(c)(6), Government Code, and the former law is
26 continued in effect for determining that person's eligibility for
27 those purposes.

1 SECTION 7. This Act takes effect September 1, 2003.