

1-1 By: Duncan S.B. No. 1107
1-2 (In the Senate - Filed March 11, 2003; March 17, 2003, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 22, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 22, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1107 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the assignment of certain justices or judges as
1-11 visiting judges.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading to Section 74.003, Government Code,
1-14 is amended to read as follows:

1-15 Sec. 74.003. ASSIGNMENT OF JUSTICES AND JUDGES FOR
1-16 APPELLATE COURTS [JUDGES].

1-17 SECTION 2. Section 74.003, Government Code, is amended by
1-18 amending Subsection (b) and adding Subsections (f) and (g) to read
1-19 as follows:

1-20 (b) The chief justice of the supreme court may assign a
1-21 qualified retired justice or judge of the supreme court, of the
1-22 court of criminal appeals, or of a court of appeals to a court of
1-23 appeals for active service regardless of whether a vacancy exists
1-24 in the court to which the justice is assigned. To be eligible for
1-25 assignment under this subsection, a retired justice or judge must:

1-26 (1) have served as an active justice or judge for at
1-27 least 96 months in a district, statutory probate, statutory county,
1-28 or appellate court, with at least 48 of those months in an appellate
1-29 court;

1-30 (2) not have been removed from office;

1-31 (3) certify under oath to the chief justice of the
1-32 supreme court, on a form prescribed by the chief justice, that the
1-33 justice or judge did not resign from office after having received
1-34 notice that formal proceedings by the State Commission on Judicial
1-35 Conduct had been instituted as provided in Section 33.022 and
1-36 before the final disposition of the proceedings;

1-37 (4) annually demonstrate that the justice or judge has
1-38 completed in the past calendar year the educational requirements
1-39 for active appellate court justices or judges; and

1-40 (5) certify to the chief justice of the supreme court a
1-41 willingness not to appear and plead as an attorney in any court in
1-42 this state for a period of two years.

1-43 (f) For the purposes of Subsection (b)(1), a month of
1-44 service is calculated as a calendar month or a portion of a calendar
1-45 month in which a justice or judge was authorized by election or
1-46 appointment to preside.

1-47 (g) Notwithstanding any other provision of law, an active
1-48 district court judge may be assigned to hear a matter pending in an
1-49 appellate court.

1-50 SECTION 3. Sections 74.041 and 74.053, Government Code, are
1-51 amended to read as follows:

1-52 Sec. 74.041. DEFINITIONS. In this chapter:

1-53 (1) "Active judge" means a person who holds a judicial
1-54 office.

1-55 (2) "Administrative region" means an administrative
1-56 judicial region created by Section 74.042.

1-57 (3) "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 (4) [(-2)] "Presiding judge" means the presiding judge
1-61 of an administrative region.

1-62 (5) "Retired judge" means:

1-63 (A) a retiree; or

2-1 (B) a person who has served as an active judge for
2-2 at least 96 months in a statutory probate or statutory county court
2-3 and has retired under the Texas County and District Retirement
2-4 System.

2-5 (6) [~~3~~] "Retiree" means a person who has retired
2-6 under the Judicial Retirement System of Texas, the Judicial
2-7 Retirement System of Texas Plan One, or the Judicial Retirement
2-8 System of Texas Plan Two.

2-9 Sec. 74.053. OBJECTION TO [~~ASSIGNED~~] JUDGE ASSIGNED TO A
2-10 TRIAL COURT. (a) When a judge is assigned to a trial court under
2-11 this chapter the presiding judge shall, if it is reasonable and
2-12 practicable and if time permits, give notice of the assignment to
2-13 each attorney representing a party to the case that is to be heard
2-14 in whole or part by the assigned judge.

2-15 (b) If a party to a civil case files a timely objection to
2-16 the assignment, the judge shall not hear the case. Except as
2-17 provided by Subsection (d), each party to the case is only entitled
2-18 to one objection under this section for that case.

2-19 (c) An objection under this section must be filed not later
2-20 than the seventh day after the date that the party receives actual
2-21 notice of the assignment or before the date that the first hearing
2-22 or trial, including pretrial hearings, commences, whichever date
2-23 occurs earlier. The presiding judge may extend the time to file an
2-24 objection under this section on written motion by a party who
2-25 demonstrates good cause [~~over which the assigned judge is to~~
2-26 ~~preside~~].

2-27 (d) An assigned [~~A former~~] judge or justice who was defeated
2-28 in the last primary or general election in which the judge or
2-29 justice was a candidate for the judicial office held by the judge or
2-30 justice [~~not a retired judge~~] may not sit in a case if either party
2-31 objects to the judge or justice.

2-32 (e) In this section, "party" includes multiple parties
2-33 aligned in a case as determined by the presiding judge.

2-34 (f) For purposes of this section, notice of an assignment
2-35 may be given and an objection to an assignment may be filed by
2-36 electronic mail.

2-37 SECTION 4. Section 74.054, Government Code, is amended by
2-38 amending Subsections (a) and (b) and adding Subsection (e) to read
2-39 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 [~~district or appellate~~] judge [~~who is a~~
2-47 ~~retiree under Subtitle D or E of Title 8,~~] who has consented to be
2-48 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 (e) An active district or appellate judge may be assigned to
2-69 hear a matter pending in a court in a county outside of the county of

3-1 the judge's residence.

3-2 SECTION 5. Subsections (c) and (e), Section 74.055,
3-3 Government Code, are amended to read as follows:

3-4 (c) To be eligible to be named on the list, a retired or
3-5 former judge must:

3-6 (1) have served as an active ~~[a]~~ judge for at least 96
3-7 ~~[48]~~ months in a district, statutory probate, statutory county, or
3-8 appellate court;

3-9 (2) have developed substantial experience in the
3-10 judge's area of specialty;

3-11 (3) not have been removed from office;

3-12 (4) certify under oath to the presiding judge, on a
3-13 form prescribed by the state board of regional judges, that the
3-14 judge did not resign from office after having received notice that
3-15 formal proceedings by the State Commission on Judicial Conduct had
3-16 been instituted as provided in Section 33.022 and before the final
3-17 disposition of the proceedings;

3-18 (5) annually demonstrate that the judge has completed
3-19 in the past calendar year the educational requirements for active
3-20 district, statutory probate, and statutory county court judges; and

3-21 (6) certify to the presiding judge a willingness not
3-22 to appear and plead as an attorney in any court in this state for a
3-23 period of two years.

3-24 (e) For purposes of Subsection (c)(1), a month of service is
3-25 calculated as a calendar month or a portion of a calendar month in
3-26 which a judge was authorized by election or appointment ~~[by the~~
3-27 ~~governor]~~ to preside.

3-28 SECTION 6. Section 74.057, Government Code, is amended by
3-29 adding Subsection (c) to read as follows:

3-30 (c) The chief justice may assign any judge that may be
3-31 assigned by the presiding judge of an administrative region under
3-32 Section 74.054. An assignment by the chief justice under this
3-33 section is not subject to objection under Section 74.053.

3-34 SECTION 7. Section 74.061, Government Code, is amended by
3-35 amending Subsection (c) and adding Subsections (j) and (k) to read
3-36 as follows:

3-37 (c) The salary of a retired judge or justice while assigned
3-38 under this chapter shall be paid out of money appropriated from the
3-39 general revenue fund for that purpose in an amount equal to the
3-40 compensation received from state and county sources of the judge of
3-41 the court to which he is assigned. The salary of a retired judge or
3-42 justice while assigned shall be determined pro rata for the period
3-43 of time that the judge or justice actually sits as the assigned
3-44 judge. The salary of a retired statutory county court judge
3-45 assigned under this chapter to serve in a district court ~~[or~~
3-46 ~~statutory county court]~~ shall be paid by the state in the same
3-47 manner as the salary of a retired district judge assigned under this
3-48 chapter to serve in a district court ~~[or statutory county court]~~ is
3-49 paid by the state.

3-50 (j) A judge or justice who sits as an assigned judge for half
3-51 a day or less shall be compensated in an amount that is equal to
3-52 one-half of the amount to which a judge or justice is entitled for
3-53 sitting as an assigned judge for a full day under this section.

3-54 (k) Notwithstanding any other provision of law, a former,
3-55 retired, or active judge is not entitled to compensation paid by the
3-56 state when the judge sits as an assigned judge for a statutory
3-57 county court.

3-58 SECTION 8. Section 75.551, Government Code, is amended by
3-59 amending Subsections (c) and (d) and adding Subsections (e) and (f)
3-60 to read as follows:

3-61 (c) An objection under this section must be filed not later
3-62 than the seventh day after the date that the party receives actual
3-63 notice of the assignment or before the date that the case is
3-64 submitted to the court, whichever date occurs earlier. The court
3-65 may extend the time to file an objection under this section on a
3-66 showing of good cause ~~[first hearing in which the assigned judge or~~
3-67 ~~justice is assigned to sit].~~

3-68 (d) A ~~[former]~~ judge or justice who was defeated in the last
3-69 primary or general election in which the judge or justice was a

4-1 candidate for the judicial office held by the judge or justice ~~[not~~
4-2 ~~a retired judge or justice]~~ may not sit in an appellate case if
4-3 either party objects to the judge or justice.

4-4 (e) In this section, "party" includes multiple parties
4-5 aligned in a case as determined by the appellate court.

4-6 (f) For purposes of this section, notice of an assignment
4-7 may be given and an objection to an assignment may be filed by
4-8 electronic mail.

4-9 SECTION 9. Subsection (d), Section 74.055, Government Code,
4-10 is repealed.

4-11 SECTION 10. (a) Sections 74.053 and 75.551, Government
4-12 Code, as amended by this Act, apply only to a case that is pending or
4-13 commences on or after September 1, 2003.

4-14 (b) Except as provided by Subsections (a) and (c) of this
4-15 section, this Act applies only to the assignment of a judge or
4-16 justice under Chapter 74 or 75, Government Code, made on or after
4-17 September 1, 2003. An assignment made before September 1, 2003, is
4-18 governed by the law in effect at the time the assignment is made,
4-19 and that law is continued in effect for that purpose.

4-20 (c) This Act does not apply to a person who immediately
4-21 before September 1, 2003, meets the eligibility requirements to be
4-22 assigned by the chief justice of the supreme court under Subsection
4-23 (b), Section 74.003, or Chapter 75, Government Code, or to be named
4-24 on a list of retired and former judges under Subsection (c), Section
4-25 74.055, Government Code, other than the certification requirement
4-26 under Subdivision (6), Subsection (c), Section 74.055, Government
4-27 Code, and the former law is continued in effect for determining that
4-28 person's eligibility for those purposes.

4-29 SECTION 11. This Act takes effect September 1, 2003.

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