

SUBJECT: Allowing parties to a criminal case to object to a visiting judge

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 6 ayes — Thompson, Clark, Crabb, Luna, Shields, Zbranek
0 nays
3 absent — Hartnett, Garcia, Solis

WITNESSES: For — Judge B.B. Schraub; Jimmy Evans, Tarrant County District Attorney
Against — None

BACKGROUND
:
Judges are divided into three categories: regular judges are currently sitting and usually assigned to a particular court, retired judges are no longer sitting and qualify for retirement under the law, and former judges, such as those defeated in an election, are not sitting and do not qualify for retirement. All three types of judges can be assigned to a hear a case in a court.

Current law allows any party to a civil case to object to the assignment of a judge, TEX. GOVT. CODE, § 73.053. If a timely objection is made, the judge is not be allowed to hear the case. A party may only make one such objection, unless the judge who is assigned to a case is a former judge but not a retired judge.

In 1992, a former Harris County District judge was assigned to a criminal matter days after he resigned his position after losing a bid for reelection. The Harris County District Attorney objected to the assignment of the judge under the provision allowing parties to object to the assignment of former judges. The Court of Criminal Appeals decided that the history of the section allowing objection to assigned judges indicated it had always been used solely for civil matters, *Lanford v. Fourteenth Court of Appeals*, 847 S.W.2d 581 (Tex. Crim. App. 1993).

DIGEST: HB 455 would allow any party to a criminal case to object to the assignment of a judge to the case. If the objection was timely, the judge would not hear the case. A party could only object to the assignment of a judge once in a case unless the judge assigned was a former judge but not a retired judge.

HB 455 would take effect on September 1, 1997 and apply on to assignments of judges made on or after that date.

SUPPORTERS SAY: Restricting the ability to object to assigned judges to only civil cases does a disservice to parties in criminal cases who should be allowed the same right. Some regard the visiting judge statute as a “defeated judges full employment act.” Whenever a judge is defeated in an election, that judge can be assigned to cases in other courts. By not allowing the parties to a criminal case to object to the assignment of such a judge, those parties are forced to have a judge rejected by the people preside over their case. Allowing such judges to preside essentially nullifies the power of voters to remove such judges from the bench.

The primary purpose of HB 455 is to allow parties to a criminal case to object to the assignment of a former judge, one defeated in an election. Though the objection could be raised against any assigned judge, the challenge could only be raised once, unless the assigned judge was a former judge. This legislation seeks to ensure the rights of both prosecutors and defendants. A party to a civil case has the right to object to an assigned judge when the only thing at stake may be their property, and that right should also apply to criminal cases when a person’s life and liberty and the interests of the state are at stake.

In the *Lanford* case, a dissenting opinion by Chief Justice McCormick stated that the legislative intent of the statute was, at best, unclear. There were cases prior to enactment of the law in which parties had attempted to object to the assignment of former judges in criminal cases. HB 455 would establish clear intent that the section of the law relating to objection to assignment of former judges should apply to both civil and criminal cases.

The argument that the state should not be allowed to object to an assigned judge because it would completely bar the judge from sitting in any trial applies to both civil and criminal cases. The plaintiff or defense bar in civil

cases often object to the assignment of former judges in all cases, thus barring those judges from sitting in any civil case. The state in criminal cases would not obtain any power that is not already given to parties in civil cases.

OPPONENTS
SAY:

As stated in the *Lanford* case by the Texas Court of Criminal Appeals, the right to object to an assigned judge was never been meant to be applied to criminal cases. Because the state is a party to every criminal action, allowing the state to object to assignment of judges would give the state extraordinary power to pressure judges. If a particular judge was not favored by the state, that judge could be objected to in every case. As the Court of Criminal Appeals noted, giving the state such power could result in the virtual nullification of the presiding judge's power of assignment.

The use of assigned judges is important to alleviate political pressure in certain cases. Elected judges actually pass some high profile cases to retired or former judges on assignment. In that way, the retired judge is not swayed by popular sentiment in making rulings. Allowing the state to object to the assignment of judges would re-inject political pressures into the process.

OTHER
OPPONENTS
SAY:

The right of parties to object to judges in criminal cases should only apply to former judges who are not retired judges — those judges that have been defeated by the voters in an election. Currently serving judges and judges who are retired from the bench should be allowed to sit in any case without objection.