

SUBJECT: Eligibility for assignment as a visiting judge in a statutory probate court

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Hunter, Hughes, Alonzo, Branch, Hartnett, Jackson, Leibowitz, Madden, Martinez, Woolley

0 nays

1 absent — Lewis

WITNESSES: For — Guy Herman, Statutory Probate Judges of Texas

Against — None

BACKGROUND: Government Code, sec. 74.055 requires each presiding judge of a judicial administrative region to maintain a list of retired and former judges who meet the requirements to serve as a visiting judge. To be eligible for the list, a retired or former judge must:

- have served as an active judge for at least 96 months in a district, statutory probate, statutory county, or appellate court;
- have developed substantial experience in the judge's area of specialty;
- not have been removed from office;
- certify under oath to the presiding judge that the retired or former judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct and did not resign from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted;
- annually demonstrate completion in the past fiscal year of the educational requirements for active district, statutory probate, and statutory county court judges; and
- certify to the presiding judge a willingness not to appear and plead as an attorney in any court in Texas for a period of two years.

Government Code, sec. 25.0022(t) establishes the eligibility standards for visiting statutory probate judges. It requires that, in order for a former or retired judge of a statutory probate court to be eligible for an assignment

as a visiting statutory probate judge, the judge must not have been removed from office and must certify under oath to the presiding judge of a judicial region that the judge did not resign from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted.

DIGEST:

CSHB 764 would amend Government Code, sec. 25.0022(t) to require that, in order for a former or retired judge to be eligible for an assignment as a visiting statutory probate judge, the judge would have to:

- certify under oath that the judge had not been publicly reprimanded or censured by the State Commission on Judicial Conduct on or after September 1, 2009;
- not have resigned or retired from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into the an allegation or appearance of misconduct or disability of the judge before the final disposition of that investigation or the judge was not publicly reprimanded or censured as a result of the investigation;
- have served as an active judge for at least 96 months in a district, statutory probate, statutory county, or appellate court; and
- have developed substantial experience in the judge's area of specialty.

After September 1, 2010, a judge would be required to demonstrate annually completion in the past fiscal year of the educational requirements for an active statutory probate court judge in order to be eligible to be a visiting statutory probate judge.

CSHB 764 would exempt judges who are eligible to serve under current law. Current law would be continued to determine eligibility for these judges.

CSHB 764 also would establish that the 96-month judicial tenure required in order to establish eligibility would not apply to those persons serving as an active judge on August 31, 2003.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CShB 764 would expand the eligibility requirements for visiting statutory probate judges so that they would match those of other visiting judges. In 2003, the 78th Legislature made several changes to the eligibility requirements for visiting judges. Among other changes, visiting judges now must have 96 months of judicial tenure instead of 48, and visiting judges must not have been reprimanded or censured by the State Commission on Judicial Conduct nor have retired once they received notice that the SCJC had commenced an investigation of them. These policies have ensured that only judges with substantial bench experience and high professional standards and records are eligible to serve as visiting judges. These established and practical standards should be applied to those visiting judges assigned to statutory probate courts as well.

Concerns that these requirements would result in fewer eligible visiting statutory probate judges are overblown. These standards have been in place for other visiting judges since 2003 and have shown great success in providing qualified visiting judges to the courts that need them, with no resulting shortage of eligible visiting judges.

**OPPONENTS
SAY:**

By increasing the eligibility requirements, CShB 764 could result in a smaller pool of eligible visiting statutory probate judges. CShB 764 would double the amount of time a former or retired statutory probate court judge would have had to have served on the bench, from four to eight years. As state and local governments in Texas realize the benefits of specialized courts and establish more and more of them, the Legislature should not act to restrict the pool of available talent needed to help these courts function.

NOTES:

The committee substitute specified that the change in eligibility standards would apply only to a reprimand or censure issued by the State Commission on Judicial Conduct on or after the bill's effective date.