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Administrative Director

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RQ-0377-GA

The Honorable Greg Abbott
Attorney General of Texas
Box 12548
Austin, Texas 78711-2548

Re: Interpretation of Section 23(c) of House Bill 3306, Act of May 29, 2003, 78th
Leg., R.S., effective June 18, 2003

Dear General Abbott:

I respectfully submit this opinion request on behalf of the Conference of Regional Judges, an informal group composed of the nine regional presiding judges appointed by the governor under Section 74.005 of the Texas Government Code. We seek an interpretation of Section 23(c) of House Bill 3306, Act of May 29, 2003, 78th Leg., R.S., which became effective June 18, 2003.

One of the primary responsibilities of the regional presiding judges is the appointment of assigned judges, more commonly referred to as visiting judges, to trial courts. Section 74.055 of the Texas Government Code requires each presiding judge to maintain a list of retired and former judges who are eligible to serve on assignment to trial courts (the "list"). Subsection 74.055(c) prescribes the eligibility requirements to be named on the list. Among other things, House Bill 3306 amended the eligibility requirements of Subsection 74.055(c). Section 23(c) of House Bill 3306 is the grandfather clause that exempts certain judges from the new eligibility requirements. Our questions concern the effect of this grandfather clause on eligibility requirements regarding length of service and disciplinary actions.

Section 23(c)

Section 23(c) states, in pertinent part:

The change in the law made by this Act to ... Section[s] 74.055, Government Code, does not apply to a person who immediately before the effective date of this Act meets the eligibility requirements ... to be named on a list of retired and former judges under Section 74.055(c), Government Code, ... and the former law is continued in effect for determining that person's eligibility for those purposes.

Length of Service

Under the new provisions of H.B. 3306, to be eligible to be named on a list of judges who may serve on assignment to trial level courts, a former or retired judge must have served as an active judge for at least 96 months in a district, statutory probate, statutory county or appellate court. Sec. 74.055(c)(1), Tex. Gov't Code. Prior to the enactment of H.B. 3306, a former or retired judge need only have served as an active judge for 48 months to be named on the list.

Disciplinary Actions

H.B. 3306 also added more stringent requirements regarding disciplinary actions to Subsection 74.055(c)(4) of the Texas Government Code. It states in pertinent part:

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

(4) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges,¹ that:

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

(B) the judge: (i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Sec. 33.022 and before the final disposition of that investigation; or (ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation.

¹ Also known as the Conference of Regional Judges.

Additionally, H.B. 3306 added a provision making a retired or former judge ineligible to be named on the list if the retired or former judge is identified in a public statement issued by the State Commission on Judicial Conduct as having resigned or retired from office in lieu of discipline. Sec. 74.055(f), Tex. Gov't Code.

Questions

The following are several scenarios in which we request your guidance regarding the effect of the grandfather clause of H.B. 3306.

1. (a) Assume that a judge was on the list of judges eligible to serve on assignment on June 17, 2003, but the judge did not meet the new eligibility requirements enacted by H.B. 3306. Is the judge still eligible to serve on assignment on June 18, 2003?

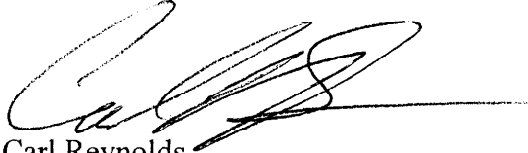
(b) If the answer to question 1(a) is yes, must the judge remain on the list continuously in order to remain eligible to serve on assignment at any time after June 18, 2003? For example, assume that at some point after June 18, 2003 the judge requests that his or her name be removed from the list but he or she wishes to resume serving on assignment at a later date. Will the judge be eligible to be placed on the list at that time even though the judge does not meet the new requirements?
2. Assume that a former or retired judge was eligible to be named on the list on June 17, 2003, but was not in fact on the list. Is the judge eligible to be named on the list after the effective date of H.B. 3306 if the judge does not meet the new eligibility requirements added by H.B. 3306?
3. Assume that a judge would have been eligible to be named on the list if the judge had left the bench and asked to be placed on the list on or before June 17, 2003. Also assume that the judge did not leave the bench until after June 18, 2003, at which time the judge did not meet the new eligibility requirements. Is the judge eligible to be named on the list when leaving the bench?

The Conference opines that the question to number 1(a) is yes; a judge who was on the list of judges eligible to serve on June 17, 2003, the day before H.B. 3306 took effect, continues to be eligible on or after June 18, 2003, even though the judge does not meet the new eligibility requirements. Under this interpretation, the following are two examples of judges who would still be eligible to serve on assignment after the effective date of H.B. 3306 if they were on the list of judges eligible to serve on assignment on June 17, 2003: 1) A judge who served 48 to 95 months before leaving the bench; and 2) a judge who was publicly reprimanded or censured by the Judicial Conduct Commission prior to June 18, 2003.

The Conference does not have an opinion regarding the other questions posed.

We look forward to your response. If you have any questions or require additional information, do not hesitate to contact me at 512-463-1625.

Sincerely,



Carl Reynolds

cc:

The Honorable B.B. Schraub, Presiding Judge, 3rd Administrative Judicial Region
The Honorable John Ovard, Presiding Judge, 1st Administrative Judicial Region
The Honorable Olen Underwood, Presiding Judge, 2nd Administrative Judicial Region
The Honorable David Peeples, 4th Administrative Judicial Region
The Honorable Darrell Hester, 5th Administrative Judicial Region
The Honorable Stephen Ables, 6th Administrative Judicial Region
The Honorable Dean Rucker, 7th Administrative Judicial Region
The Honorable Jeff Walker, 8th Administrative Judicial Region
The Honorable Kelly Moore, 9th Administrative Judicial Region
The Honorable Pat Lykos, Senior Judge, 180th District Court
Margaret Bennett, General Counsel, Office of Court Administration