

BOWIE COUNTY CRIMINAL DISTRICT ATTORNEY

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RQ-1035-GA

December 28, 2011

Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78722-2548

RE: Request for Opinion

Dear Attorney General Abbott:

United State District Court Judge David Folsom, of the Eastern District of Texas, Texarkana Division has requested this office to seek an opinion from your office regarding the following:

- 1.) Is a retired United States District Judge authorized to conduct a marriage ceremony in the State of Texas?

I am enclosing the Brief in support of Request for Attorney General Opinion.

Based upon this letter and the accompanying Brief, the Bowie County Criminal District Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to this question.

Thank you for your attention to this matter and if your office should require additional information, please advise.

CC: Honorable David Folsom
United States District Court
Eastern District of Texas, Texarkana Division

Sincerely,

Jerry D. Rochelle
Criminal District Attorney

**BRIEF IN SUPPORT OF REQUEST FOR
ATTORNEY GENERAL OPINION**

This Brief in Support of Request for Attorney General Opinion is filed herein with the accompanying letter request dated December 28, 2011.

QUESTION

- 1.) Is a retired United States District Judge authorized to conduct a marriage ceremony in the State of Texas?

BACKGROUND AND FACTS

On occasion, United States District Judge David Folsom is requested to perform a marriage ceremony in the State of Texas and pursuant V.T.C.A., Family Code §2.202 (a)(4) does so. Judge Folsom who has over twelve (12) years of service as a United State District Judge has announced his intention to retire and has asked this office to seek an Attorney General's Opinion as to whether he upon retirement or any other retired federal judge may perform marriage ceremonies.

LEGAL AUTHORITIES

V.T.C.A., Family Code §2.202 (a)(4)

(4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county court at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, or judge or magistrate of a federal court of this state.

V.T.C.A., Family Code §2.202 (b)

(b) For the purpose of this section, a retired judge or justice is a former judge or justice who is vested in the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two or who has an aggregate of atleast 12 years of service as judge or justice of any type listed in Subsection (a)(4).

DISCUSSION

There is no question that a sitting federal judge is authorized to conduct a marriage ceremony in Texas. V.T.C.A., Family Code §2.202 (a)(4) states:

(4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county court at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, or judge or magistrate of a federal court of this state.

This section also specifically provides that "retired justice or judge of those courts" (supreme court, court of criminal appeals, courts of appeals, district, county, probate, county courts of law, courts of domestic relations, juvenile courts) and retired justice of the peace may all conduct a marriage ceremony. Retired judge or magistrate of a federal court in Texas are not listed.

The Family code defines a retired judge. V.T.C.A., Family Code §2.202 (b)
States:

(b) For the purpose of this section, a retired judge or justice is a former judge or justice who is vested in the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two or who has an aggregate of at least 12 years of service as judge or justice of any type listed in Subsection (a)(4).

A United States District Court Judge does not participate in the Judicial Retirement System of Texas Plan One or in the Judicial Retirement System of Texas Plan Two, so therefore would be barred from performing a marriage ceremony upon retirement.

The question centers around the language of the last portion of V.T.C.A., Family Code §2.202 (b): "or who has an aggregate of at least 12 years of service as judge or justice of any type listed in Subsection (a)(4)". Does this language include retired federal judges who have 12 or more years of service as a federal judge? Research into the statutes and case law has not provided an answer.

REQUEST FOR LEGAL OPINION

Based upon the foregoing, the Bowie County Criminal District Attorney's Office is requesting an opinion from the Texas Attorney General with regard to the question presented.

Respectfully submitted,


Jerry D. Rochelle
Criminal District Attorney