

By: Senator(s) Turner

To: Judiciary, Division A

SENATE BILL NO. 2888

1 AN ACT TO AMEND SECTION 9-1-105, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT SPECIAL JUDGES APPOINTED UPON A SITTING JUDGE'S
3 RECUSAL WILL NOT BE APPOINTED FROM THE CHANCERY OR CIRCUIT
4 DISTRICT OF ANY PLAINTIFF, DEFENDANT OR ATTORNEY IN THE CASE; AND
5 FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** Section 9-1-105, Mississippi Code of 1972, is
8 amended as follows:

9 9-1-105. (1) Whenever any judicial officer is unwilling or
10 unable to hear a case or unable to hold or attend any of the
11 courts at the time and place required by law by reason of the
12 physical disability or sickness of such judicial officer, by
13 reason of the absence of such judicial officer from the state, by
14 reason of the disqualification of such judicial officer pursuant
15 to the provision of Section 165, Mississippi Constitution of 1890,
16 or any provision of the Code of Judicial Conduct, or for any other
17 reason, the Chief Justice of the Mississippi Supreme Court, with
18 the advice and consent of a majority of the justices of the
19 Mississippi Supreme Court, may appoint a person as a special judge
20 to hear the case or attend and hold a court. To be eligible for
21 appointment as a special judge, the person appointed must be
22 selected from a judicial district, whether circuit or chancery
23 district, that is not the judicial district of any plaintiff or
24 defendant or any attorney for any plaintiff or defendant in the
25 case at bar.

26 (2) Upon the request of the Chief Judge of the Court of
27 Appeals or the senior judge of a chancery or circuit court
28 district, the Chief Justice of the Mississippi Supreme Court, with

29 the advice and consent of a majority of the justices of the
30 Mississippi Supreme Court, shall have the authority to appoint a
31 special judge to serve on an emergency basis in a circuit or
32 chancery court. It shall be the duty of any special judge so
33 appointed to assist the court to which he is assigned in the
34 disposition of causes so pending in such court.

35 (3) When a vacancy exists for any of the reasons enumerated
36 in Section 9-1-103, the vacancy has not been filled within seven
37 (7) days by an appointment by the Governor, and there is a pending
38 cause or are pending causes in the court where the vacancy exists
39 that in the interests of justice and in the orderly dispatch of
40 the court's business require the appointment of a special judge,
41 the Chief Justice of the Supreme Court, with the advice and
42 consent of a majority of the justices of the Mississippi Supreme
43 Court, may appoint a qualified person as a special judge to fill
44 the vacancy until the Governor makes his appointment and such
45 appointee has taken the oath of office.

46 (4) If the Chief Justice pursuant to this section shall make
47 an appointment within the authority vested in the Governor by
48 reason of Section 165, Mississippi Constitution of 1890, the
49 Governor may at his election appoint a person to so serve. In the
50 event that the Governor makes such an appointment, any appointment
51 made by the Chief Justice pursuant to this section shall be void
52 and of no further force or effect from the date of the Governor's
53 appointment.

54 (5) When a judicial officer is unwilling or unable to hear a
55 case or unable or unwilling to hold court for a period of time not
56 to exceed two (2) weeks, the trial judge or judges of the affected
57 district or county and other trial judges may agree among
58 themselves regarding the appointment of a person for such case or
59 such limited period of time. To be eligible for appointment under
60 this subsection (5), the person appointed must be selected from a
61 circuit or chancery district, as the case may be, that is not the

62 judicial district of any plaintiff or defendant or any attorney
63 for any plaintiff or defendant in any of the cases to be heard by
64 the appointed person. The trial judges shall submit a notice to
65 the Chief Justice of the Supreme Court informing him of their
66 appointment. If the Chief Justice does not appoint another person
67 to serve as special judge within seven (7) days after receipt of
68 such notice, the person designated in such order shall be deemed
69 appointed.

70 (6) Except as otherwise restricted in this section, a person
71 appointed to serve as a special judge may be any * * * sitting or
72 retired chancery, circuit or county court judge, Court of Appeals
73 judge or Supreme Court Justice, or any other person possessing the
74 qualifications of the judicial office for which the appointment is
75 made; provided, however, that a judge or justice who was retired
76 from service at the polls shall not be eligible for appointment as
77 a special judge in the district in which he served prior to his
78 defeat.

79 (7) Except as otherwise provided in subsection (2) of this
80 section, the need for an appointment pursuant to this section may
81 be certified to the Chief Justice of the Mississippi Supreme Court
82 by any attorney in good standing or other officer of the court.

83 (8) The order appointing a person as a special judge
84 pursuant to this section shall describe as specifically as
85 possible the duration of the appointment.

86 (9) A special judge appointed pursuant to this section shall
87 take the oath of office, if necessary, and shall, for the duration
88 of his appointment, enjoy the full power and authority of the
89 office to which he is appointed.

90 (10) Any * * * sitting justice or judge appointed as a
91 special judge under this section shall receive no additional
92 compensation for * * * service as special judge. Any other person
93 appointed as a special judge hereunder shall, for the period of
94 his service, receive compensation from the state for each day's

95 service a sum equal to 1/260 of the current salary in effect for
96 the judicial office; provided, however, that no retired chancery,
97 circuit or county court judge, retired Court of Appeals judge or
98 any retired Supreme Court Justice appointed as a special judge
99 pursuant to this section may, during any fiscal year, receive
100 compensation in excess of twenty-five percent (25%) of the current
101 salary in effect for a chancery or circuit court judge. Any
102 person appointed as a special judge shall be reimbursed for travel
103 expenses incurred in the performance of the official duties to
104 which he may be appointed hereunder in the same manner as other
105 public officials and employees as provided by Section 25-3-41,
106 Mississippi Code of 1972.

107 (11) If any person appointed as a special judge is receiving
108 retirement benefits by virtue of the provisions of the Public
109 Employees' Retirement Law of 1952, appearing as Sections 25-11-1
110 through 25-11-139, Mississippi Code of 1972, such benefits shall
111 not be reduced in any sum whatsoever because of such service, nor
112 shall any sum be deducted as contributions toward retirement under
113 said law.

114 (12) The Supreme Court shall have authority to prescribe
115 rules and regulations reasonably necessary to implement and give
116 effect to the provisions of this section.

117 (13) Nothing in this section shall abrogate the right of
118 attorneys engaged in a case to agree upon a member of the bar to
119 preside in a case pursuant to Section 165 of the Mississippi
120 Constitution of 1890.

121 (14) The Supreme Court shall prepare the necessary payroll
122 for special judges appointed pursuant to this section and shall
123 submit such payroll to the Department of Finance and
124 Administration.

125 (15) Special judges appointed pursuant to this section shall
126 direct requests for reimbursement for travel expenses authorized
127 pursuant to this section to the Supreme Court and the Supreme

128 Court shall submit such requests to the Department of Finance and
129 Administration. The Supreme Court shall have the power to adopt
130 rules and regulations regarding the administration of travel
131 expenses authorized pursuant to this section.

132 **SECTION 2.** The Attorney General of the State of Mississippi
133 shall submit this act, immediately upon approval by the Governor,
134 or upon approval by the Legislature subsequent to a veto, to the
135 Attorney General of the United States or to the United States
136 District Court for the District of Columbia in accordance with the
137 provisions of the Voting Rights Act of 1965, as amended and
138 extended.

139 **SECTION 3.** This act shall take effect and be in force from
140 and after the date it is effectuated under Section 5 of the Voting
141 Rights Act of 1965, as amended and extended, or July 1, 2004,
142 whichever is later.