

By: Representative Baker (74th)

To: Judiciary A

HOUSE BILL NO. 498

1 AN ACT TO AMEND SECTION 9-1-105, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY ELIGIBILITY REQUIREMENTS FOR THE APPOINTMENT OF PERSONS
3 APPOINTED TO SERVE AS A SPECIAL JUDGE; AND FOR RELATED PURPOSES.

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

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

7 9-1-105. (1) Whenever any judicial officer is unwilling or
8 unable to hear a case or unable to hold or attend any of the
9 courts at the time and place required by law by reason of the
10 physical disability or sickness of such judicial officer, by
11 reason of the absence of such judicial officer from the state, by
12 reason of the disqualification of such judicial officer pursuant
13 to the provision of Section 165, Mississippi Constitution of 1890,
14 or any provision of the Code of Judicial Conduct, or for any other
15 reason, the Chief Justice of the Mississippi Supreme Court, with
16 the advice and consent of a majority of the justices of the
17 Mississippi Supreme Court, may appoint a person as a special judge
18 to hear the case or attend and hold a court.

19 (2) Upon the request of the Chief Judge of the Court of
20 Appeals or the senior judge of a chancery or circuit court
21 district, or upon his own motion, the Chief Justice of the
22 Mississippi Supreme Court, with the advice and consent of a
23 majority of the justices of the Mississippi Supreme Court, shall
24 have the authority to appoint a special judge to serve on a
25 temporary basis in a circuit or chancery court in the event of an
26 emergency or overcrowded docket. It shall be the duty of any
27 special judge so appointed to assist the court to which he is

28 assigned in the disposition of causes so pending in such court for
29 whatever period of time is designated by the Chief Justice.

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

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

49 (5) When a judicial officer is unwilling or unable to hear a
50 case or unable or unwilling to hold court for a period of time not
51 to exceed two (2) weeks, the trial judge or judges of the affected
52 district or county and other trial judges may agree among
53 themselves regarding the appointment of a person for such case or
54 such limited period of time. The trial judges shall submit a
55 notice to the Chief Justice of the Supreme Court informing him of
56 their appointment. If the Chief Justice does not appoint another
57 person to serve as special judge within seven (7) days after
58 receipt of such notice, the person designated in such order shall
59 be deemed appointed.

60 (6) A person appointed to serve as a special judge may be
61 any currently sitting or retired chancery, circuit or county court
62 judge, Court of Appeals judge or Supreme Court Justice, or any
63 other person possessing the qualifications of the judicial office
64 for which the appointment is made; provided, however, that a judge
65 or justice who was retired from service at the polls shall not be
66 eligible for appointment as a special judge in the district in
67 which he served prior to his defeat, except that in the case of a
68 judge or justice who was retired from service at the polls and
69 subsequently was elected to judicial office which included in such
70 district, the district where the person had been formally retired
71 from service at the polls, in which case, a judge or justice who
72 having been subsequently elected to such an office and retired
73 from service, other than at the polls, shall be eligible for
74 appointment in such district.

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

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

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

86 (10) Any currently sitting justice or judge appointed as a
87 special judge under this section shall receive no additional
88 compensation for his or her service as special judge. Any other
89 person appointed as a special judge hereunder shall, for the
90 period of his service, receive compensation from the state for
91 each day's service a sum equal to 1/260 of the current salary in
92 effect for the judicial office; provided, however, that no retired

93 chancery, circuit or county court judge, retired Court of Appeals
94 judge or any retired Supreme Court Justice appointed as a special
95 judge pursuant to this section may, during any fiscal year,
96 receive compensation in excess of twenty-five percent (25%) of the
97 current salary in effect for a chancery or circuit court judge.
98 Any person appointed as a special judge shall be reimbursed for
99 travel expenses incurred in the performance of the official duties
100 to which he may be appointed hereunder in the same manner as other
101 public officials and employees as provided by Section 25-3-41,
102 Mississippi Code of 1972.

103 (11) If any person appointed as such special judge is
104 receiving retirement benefits by virtue of the provisions of the
105 Public Employees' Retirement Law of 1952, appearing as Sections
106 25-11-1 through 25-11-139, Mississippi Code of 1972, such benefits
107 shall not be reduced in any sum whatsoever because of such
108 service, nor shall any sum be deducted as contributions toward
109 retirement under said law.

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

113 (13) Nothing in this section shall abrogate the right of
114 attorneys engaged in a case to agree upon a member of the bar to
115 preside in a case pursuant to Section 165 of the Mississippi
116 Constitution of 1890.

117 (14) The Supreme Court shall prepare the necessary payroll
118 for special judges appointed pursuant to this section and shall
119 submit such payroll to the Department of Finance and
120 Administration.

121 (15) Special judges appointed pursuant to this section shall
122 direct requests for reimbursement for travel expenses authorized
123 pursuant to this section to the Supreme Court and the Supreme
124 Court shall submit such requests to the Department of Finance and
125 Administration. The Supreme Court shall have the power to adopt

126 rules and regulations regarding the administration of travel
127 expenses authorized pursuant to this section.

128 **SECTION 2.** This act shall take effect and be in force from
129 and after July 1, 2007.